United States Court of Appeals

for the Second Circuit

APPENDIX

76-7348

United States Court of Appeals

For the Second Circuit

B

BOSTON M. CHANCE, LOUIS C. MERCADO, *et al.*,
Plaintiffs-Appellees,

against

THE BOARD OF EXAMINERS,
Defendant-Appellant,

and

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK
and THE CHANCELLOR OF THE CITY SCHOOL DISTRICT,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York

UNITED STATES COURT OF APPEALS
FILED
OCT 6 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

VOLUME I, PART C
(Pages 641a to 960a)

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER
Attorneys for Defendant-Appellant
Board of Examiners
425 Park Avenue
New York, New York 10022
(212) 759-8400

ELIZABETH B. DUBOIS
Attorney for Plaintiffs-Appellees
271 Madison Avenue
Suite 708
New York, New York 10016
(212) 679-6502

W. BERNARD RICHLAND
Corporation Counsel of the City of New York
Attorney for Defendants-Appellees
Board of Education and Chancellor of the City School District
Municipal Building
New York, New York 10007
(212) 566-2192

PAGINATION AS IN ORIGINAL COPY

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BOARD OF EDUCATION
OF THE CITY OF NEW YORK
110 LIVINGSTON STREET
BROOKLYN, N. Y. 11201

D SIEGEL, SECRETARY
ND P. RYAN, ASSISTANT SECRETARY

641a
Date September 11, 1975

TO: All Members of the Board

FROM: Harold Siegel

SUBJECT: CHANCE-MERCADO - A.I.R. PROTOTYPE JOB ANALYSES

In accordance with the modified final order, we have submitted the A.I.R. Job Analyses of Three Supervisory Positions to the class of persons mentioned in the order.

Attached are copies of advisory opinions we have received from:

1. Sim Bernstein Associates (Mr. Bernstein)
   (Covered by amendment dated 8/18/75)

2. Robert G. Owens, Ph.D.
   (Covered by amendment dated 9/8/75)

3. Bro. Robert F. Lally,(dated 8/28/75)

4. Mr. Alvin Yurman,(dated 8/22/75)

5. Mr. Nicholas Ciccheti, (dated 7/22/75)

6. Mr. Noel Kriftcher, (dated 7/24/75)

The order required that advisory opinions be requested from:

a. A personnel specialist from outside the N.Y.C. school system - (Mr. Bernstein)

b. A college or university specialist in the relevant area - (Dr. Owens)

c. A Community School Board representative designated by the Chancellor - (Bro. Lally)

(Continued)

d. A Community Superintendent or Central School Board Superintendent (Mr. Ciccheti)

e. An incumbent supervisor in the relevant category - (Mr. Yurmin, Principal; Mr. Kritchen, Assistant Principal)

We are still awaiting a report from Mr. Stanley Kantor, President of the Association of Elementary School Assistant Principals.

Will you please review these responses in advance of your discussion of the A.I.R. report.

HS:rfg
Atts.

cc: Mr. I. Anker, Chancellor
Dr. B. Gifford, Deputy Chancellor

THE BOARD OF EXAMINERS

33 COURT STREET, BROOKLYN, N.Y. 11201

643a

[illegible], Chairman
[illegible], Vice Chairman
[illegible]
[illegible]

ANKER, Chancellor

THOMAS J. [illegible]
Associate Attorney
WILLIAM E. [illegible]
Deputy Associate Attorney
SIEGFRIED ROTH
Secretary

September 23, 1975

Memorandum (6)

TO: Mr. Harold Siegel, Secretary
Board of Education

FROM: Julius R. Rubin, Chairman
Board of Examiners

SUBJECT: Letter from Development Dimensions, Inc. dated September 16, 1975 Concerning the Job Analyses Submitted by A.I.R.

At your request, I enclose a copy of a letter from Development Dimensions, Inc. concerning the job analyses submitted by the American Institutes for Research.

JRR:PDT:ek
Enclosure

EXHIBIT D

DEVELOPMENT DIMENSIONS, INC. 644a

Suite 419, 250 Mt. Lebanon Boulevard, Pittsburgh, Pennsylvania 15234 Phone 412/343-5555

September 16, 1975

Dr. Julius R. Rubin
Chairman
Board of Examiners
Board of Education of the
City of New York
65 Court Street
Brooklyn, New York 12201

Dear Dr. Rubin:

We have examined the Prototype Job Analysis of Three Supervisory Positions within the New York City School System submitted to the Board of Education by the American Institutes for Research.

Dr. Byham and I have concluded that the AIR job analysis can be used by Development Dimensions towards the development of the prototype examinations in accordance with the final judgment of the Court in the Chance vs. Board of Education case. In addition, we are confident the prototype examinations can be content validated in accordance with the Principles for the Validation and Use of Personnel Selection Procedures of the Division of Industrial-Organizational Psychology of the American Psychological Association and defended in Court by Development Dimensions.

We are looking forward to developing the prototype examinations a[illegible]are hopeful the AIR job analysis will be approved by the Board of Educati[illegible]nd the designated reviewers.

Sincerely yours,

Richard A. Dapra

Richard A. Dapra, Ph.D.
Assessment and Development Associate

RAD/ask

ATTACHMENT

'75 SEP 22 PM 4:26

RECEIVED BY
BD. AND OF EXAMINERS
OFFICE OF THE CHAIRMAN

THE BOARD OF EXAMINERS
55 COURT STREET, BROOKLYN, N.Y. 11201

645a

JULIUS R. RUBIN, Chairman
LAWRENCE C. NICHOLAS, Vice Chairman
MEL FITZGERALD
MAY ROSKOWITZ
IRVING ANKER, Chancellor

THOMAS J. MCGEE
Administrator
WILLIAM E. BROWN
Deputy Administrator
SIEGFRIED POTH
Secretary

December 5, 1975

MEMORANDUM (53)

TO: Mr. Irving Anker, Chancellor
Board of Education

FROM: Julius R. Rubin, Chairman
Board of Examiners

SUBJECT: Implementation of Prototype Supervisory Examinations
Under Chance-Mercado Federal Court Order

- -

At a conference held in your office November 6, 1975 with the Board of Examiners, the implementation of a prototype supervisory examination ordered by the Federal Court in July 1973 was discussed.

The prototype examinations are now two years overdue, although a job analysis has been completed and a consultant retained to develop the actual examinations.

The Board of Examiners feels it is now urgent to call to your attention the fact that the protracted delay in the implementation of the Final Judgment in the Chance-Mercado case is in defiance of the clear directive of the Federal Court order and continues to result in the bypassing of the merit system established by the law in this state for the selection and licensure of supervisors.

In the Notice of Settlement (Final Judgment) issued on July 12, 1973, Judge Walter R. Mansfield ordered that:

"There is no just reason for delay (in the implementation of the final judgment") (Par. XV)

"Within six (6) months of the effective date of this Judgment, the parties shall either agree upon a plan for a permanent system for the selection of supervisors ..." (Par. IX)

EXHIBIT E

646a

A "Plan for Licensing Supervisors in the New York City School System," approved by both parties, outlined in detail the procedures and methods by which the permanent system of licensure was to be established, and called for the selection of consultants to begin the task.

In "Memorandum 70 Civ 414 HR1," issued on March 25, 1975, Judge D.J. Tyler ruled that:

> "The community is entitled to the competitive examination licensing procedure which its legislature has deemed appropriate as soon as possible." (Pg. 4)

In view of these factors, the Board of Examiners respectfully requests that action be taken to facilitate the examination for the spring term of 1976.

JRR:pr

Exhibit F - Letter dated April 5, 1976, from Howard A. Jacobson to Judge Pollack.

(Printed at 575a-579a)

Affidavit of Jeanne R. Silver, plus exhibit,
sworn to April 26, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOSTON M. CHANCE, et al., Plaintiffs, -against- THE BOARD OF EXAMINERS AND THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al., Defendants.	70 Civ. 4141 (M.P.) AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JEANNE R. SILVER, being duly sworn, deposes and says:

1. I am one of the attorneys for plaintiffs in this case and am fully familiar with the facts and circumstances herein.

2. I submit this affidavit in support of the motion of defendants Board of Education and Chancellor of the City School system [hereinafter referred to collectively as the defendant Board of Education], filed April 9, 1976, for an Order modifying this Court's Order of March 25, 1975 (hereinafter the March 1975 Order), and approving a modified Plan for licensing and selecting supervisors. This support is premised on the conditions set forth in paragraph 18 below.

3. For the reasons set forth below, and in the accompanying memorandum, plaintiffs submit that it is necessary and appropriate to modify the Plan for licensing and selecting supervisors contained in the March 1975 Order

(hereinafter the "original Plan"), and that the modifications contained in the Plan annexed to the Board of Education's instant motion (hereinafter the "modified Plan") are fully consistent with current needs, as well as the background and objectives of this lawsuit and this Court's prior determinations.

4. The purpose of this affidavit is to demonstrate the manner in which the modified Plan fulfills and improves upon the intentions of the original, and the reasons why its approval will faciliate more expeditious development of a permanent new licensing system which complies with Constitutional requirements.

Background

5. The original Plan was approved by this Court to fully and permanently replace the procedures for licensing and selecting supervisors successively enjoined in its preliminary injunction of September 20, 1971 and its Final Judgment and Order dated July 12, 1973. Contrary to the Board of Examiners' characterization, it was not part of a "consent decree".

6. Negotiations among the parties regarding a new system had led to submission to the Court in May, 1974 of a partial plan for a new licensing and selection system. While plaintiffs had participated in the development of that plan, they had specified to defendants at all times, and made clear to the Court at the time of the submission, that agreement on issues regarding who was to conduct initial job analyses and validation studies contemplated by the plan, and on provisions relating to reporting, monitoring and Court approval of the plan's implementation, were

fundamental to their agreement to any other aspect of the plan. The parties failed to agree on any of those issues, and they were extensively litigated before the Court entered its March, 1975 Order, which partly granted and partly denied motions made by each side.

The Original Plan for a New Supervisory Licensing and Selection System

7. The original Plan as approved and incorporated in the Court's March, 1975 Order required radical departure by the Board of Examiners and Board of Education from previous licensing and selection procedures.[1/] Reflecting the requirements that new examination procedures be non-discriminatory and job-related, the District Court's concern that new procedures "be more adaptable to the community school board type of administration," Chance v. Board of Examiners, 330 F. Supp. 203, 204 (S.D.N.Y. 1971), and other concerns of the parties to the negotiations, it set forth detailed and complicated mandates to both sets of defendants. It outlawed the prior system of examinations, which was based primarily on written and oral tests and wholly on the Board of Examiners' judgment as to what those tests should contain. Instead it outlined an entirely new system. The first phase was to be an extensive job analysis conducted by the Board of Education. The ensuing examining procedures, to be developed and administered by the Board of Examiners, included two steps. In Step 1, the Examiners would determine, on the basis of a battery of written, oral and performance tests, whether applicants for supervisory positions were minimally qualified for provisional appointment in areas deemed "essential" by the job analysis, and place those qualified on provisional eligible lists. In addition, it would prepare extensive profiles for use by appointing

---

1/ The Plan was annexed as Exhibit "A" to the Order; copies of the Order and Plan are included as Exhibit "B" to the Board of Examiners' Motion to "Implement" dated April 20, 1976.

authorities of each applicant's performance on all areas tested. In Step 2 the Board of Examiners would evaluate the performance "on-the-job" of each "eligible" individual who had obtained provisional employment. If an individual was successful in Step 2, he would be awarded a permanent license for the position in question.

8. This elaborate procedure necessitated safeguards to assure compliance with constitutional requirements that examinations be non-discriminatory and job-related. Thus the Plan required the Board of Examiners to engage in scientifically acceptable validation procedures. Pursuant to extensive provisions largely included by the Court over the defendants' objections in the proceedings discussed above, the Board was further required to furnish the plaintiffs extensive ongoing information, some in advance of instituting the new procedures, about the methods used in developing and validating the tests, the characteristics of personnel who administered them, and their racial/ethnic impact. All these procedures were to be followed initially in connection with the development of job analyses and examinations for three "prototype" positions . These "cover[ed] the largest number of people in the supervisory categories" and were to serve as "models" for developing other examinations for approximately 44 additional positions.

The Proposed Modified Plan for A New Supervisory Licensing and Selection System

9. It is apparent that the system authorized by the original Plan was complex and elaborate. The stated purpose of the Board of Education's motion to modify the Plan is to permit the institution of a less cumbersome system which would serve reliably and quickly effectuate the Plan's fundamental goals while responding to new considerations

posed by the City's fiscal crisis and the current anticipated absence of supervisory vacancies.

10. The modified Plan, like the original, contemplates a two-step licensing system, in which Phases 1 and 2, respectively, parallel Steps 1 and 2 of its predecessor. Like Step 1 of the original Plan, Phase 1 requires that the Board of Examiners evaluate each candidate's qualifications for placement on eligible lists and provisional licensure. The Examiners also retain responsibility in Phase 1 to develop profiles for the use of appointing authorities, including appraisals of candidates' written communication skills. Phase 2 of the modified Plan, like Step 2 of the original, comprises an evaluation of all appointed eligibles to determine whether their on-the-job performance warrants permanent licensure.

11. While the modified Plan thus continues the essential features of the original, it envisions simplified, streamlined procedures both for developing and implementing new examinations. The need for job analyses is obviated by the modified Phase 1 procedures and the substitution of current on-the-job evaluation procedures for new Board of Examiners' procedures at Phase 2. The modified Phase 1 procedures can be instituted promptly without the elaborate and costly processes of job analyses and review, development of multiple testing devices, and continued review of developmental data by plaintiffs and the Court, all of which were mandated by the March 1975 Order. The use for Phase 2 of annual on-the-job evaluation procedures already required to be conducted by appointing authorities and supervised by the Chancellor, avoids an unnecessary duplication of functions which would have been entailed in the Board of Examiners' development of new evaluation procedures and deployment throughout the City of its own evaluating staff.

12. The Board of Education's proposed modified Plan is responsive to the current need for economy in administration of City functions. There can certainly be no doubt of this urgency nor the acute shortage of positions which makes it peculiarly inappropriate at present to invest unnecessarily in costly licensing procedures which may prove obsolete before they are ever used. In addition to the Board of Education's own assertions in its vice-president's affidavit, and general public knowledge of the impact on employment of the City's fiscal crisis, reports furnished to plaintiffs' counsel pursuant to the Court's orders in this case affirm the shrinkage in presently and potentially available supervisory vacancies. Thus, the triennial reports on the numbers and outcome of interim on-the-job evaluations required by the July 12, 1973 Final Judgment (¶VIB), reflect successive declines in the numbers of applications for evaluation culminating with only 25 applications for the 4-month period reported in December, 1975. Reports on impending supervisory lay-offs, submitted pursuant to the Court's "Excessing" Order of February 7, 1975, also fully confirm the Board of Education's statements (Christen Aff. ¶¶ 33-39) that for the foreseeable future, there will be many supervisory lay-offs, mostly of people employed in those positions identified as "prototypical" and slated for development of the first new examinations under the original Plan, rather than appointment of new supervisors to fill either the prototypical or most other supervisory positions.

13. Plaintiffs submit that quite apart from considerations of economy, the Board's proposed modified Plan contains major improvements over the original which are essential to permit the expeditious development of valid examination procedures and prompt resolution of this protracted litigation.

14. The complexity of the original Plan and the testing process it contemplated posed inherent barriers to development of job-related, non-discriminatory examinations. This has been highlighted by experience with the prototype job analyses. Valid job analyses are the essential underpinning of job-related examinations. The Board of Education's designated consultants spent over 6 months in developing analyses. Nevertheless, as indicated in the letter annexed as Exhibit "1" hereto, and the Christen affidavit (¶¶12-24), testing personnel and educational experts for both plaintiffs and the Board of Education concur in the belief that these analyses do not afford a basis for non-discriminatory, job-related examinations.

15. The simplicity of the modified Plan, eliminating job analyses and tests traditionally associated with employment discrimination, reduces the possibility illustrated by experience with the job analyses that new test development efforts will build in discriminatory and non-job-related characteristics. At the very least, it reduces the potential for extensive and repeated delays which this experience exemplifies.

16. The introduction of less elaborate licensing procedures by the Board of Examiners is also warranted by recent advances in related procedures for credentialing supervisory staff and assuring the high quality and fairness of appointments. For example, the institution by the State Education Department of long-standing plans for reform of teacher education and state certification support the Board of Education's evident conclusion that it is unnecessary to mandate extensive examinations which supplement State requirements. The Board of Education's work in developing procedures and rating forms for ongoing on-the-job evaluations by

community school boards and other appointing authorites (Christen Aff. ¶45), is a recent innovation, leading to the inevitable conclusion that additional evaluations by the Board of Examiners would constitute an unnecessary duplication of procedures.

17. A most important new development in supervisory selection since the genesis of the original Plan is the experience gained by appointing authorities and the Chancellor in making and supervising appointments under so-called "Special Circular 30" procedures. Those procedures were established by the Chancellor to assure that interim appointments of acting personnel authorized by the September 20, 1971 preliminary injunction herein, would be made on a uniform, non-discriminatory basis. They were continued and refined pursuant to the Final Judgment of July 12, 1973 (¶IIIC). Between October 1972 and the present, the Chancellor, acting in ongoing consultation with an Advisory Council representing community school boards, education professionals and civic groups (see Christen Aff. ¶17). has developed and repeatedly revised in the light of experience extensive requirements to be followed by appointing authorities in making their selections. Appointing authorities in turn have been required to submit supplementary procedures to the Chancellor for approval as well as to justify their implementation of these procedures. The appointive system, which was in its infancy when the outlines of the original Plan were developed, is now an ongoing, established part of the supervisory selection process which will in any event be continued, and is made an integral part of Phase 2 of the modified Plan. Providing a basis for ongoing supervision of the selection process, it is a further basis for endorsing the curtailment of expensive, elaborate central examination procedures.

Conditions on Which Plaintiffs' Consent to Entry of the Board of Education's Proposed Modified Order and Plan is Premised

18. Plaintiffs have made clear to counsel for the Board of Education throughout the negotiations relating to the instant motion that they would consent to modification of the March 25, 1975 order and Plan only on certain conditions. Those conditions are reflected in the modified Plan. They specifically include matters relating to the character of the examinations at both Phase I and Phase II, and to the respective roles of the defendants in developing the procedures at each phase. It is because of the Plan's specific provisions with respect to these and other matters, and on the condition that each aspect of the Plan considered essential by plaintiffs is retained, that plaintiffs are willing to give up the substantial protections for plaintiffs' interests contained in the original Plan's detailed provisions. Those protections included such matters as, for example: (1) the development of job analyses by outside consultants, and with the advice of and in consultation with specified educational and community groups; (2) the requirement that validation studies demonstrating the non-discriminatory and job-related nature of the new system be conducted and that all data relating thereto be provided to plaintiffs; and (3) the inclusion of elaborate reporting, monitoring and Court approval provisions. Provisions relating to these and other fundamental protections were included in the original Plan. Plaintiffs agreed to their deletion from the modified Plan because of the other modifications of that Plan which appeared to accord plaintiffs comparable protection. Subject to these conditions, plaintiffs support the Board of Education's motion for approval of a modified licensing and selection plan.

19. Plaintiffs submit that it is clearly appropriate for the Court to modify the original licensing and selection system, in a manner consistent with constitutional requirements and the school system's changing needs and circumstances, on motion of the Board of Education and Chancellor. The Board of Education is the agency vested under State law with responsibility to manage and administer the City's educational system and determine its educational and fiscal policies. N.Y. Ed. Law Section 2554, 2590-g,h,i,j. With the Chancellor, the Board establishes the titles and prescribes the duties and qualifications of all positions. N.Y. Ed. Law Section 2590-j.2; 2554.2; 2573.10. The Chancellor then "require(s) the Board of Examiners, in anticipation of the reasonable needs of the school system, to conduct examinations" for such positions. N.E. Ed. Law Section 2573.2. In short, the Board of Education is the ultimate judge under the law of the school system's fiscal, educational and staffing requirements. If in the exercise of that judgment it determines, as it has done, that the needs of the system will be badly served by an order mandating institution of an elaborate licensing procedure when few if any vacancies for successful candidates will exist, the Court should be guided by that determination.

20. The modified Plan is fully consistent with the role of the Board of Examiners under State law. In contrast to the Board of Education's plenary responsibilities for personnel selection, appointment and licensure, the Board of Examiners' duty is to develop and administer examinations which, in the case of supervisory candidates, must be "open, qualifying", i.e., non-competitive. N.Y. Ed. Law Section 2590-j.3.(b)(2). The guidelines in the modified Plan, no less than in the original one, leave to the

Examiners these traditional duties, subject to strictures necessitated by the past patterns of discrimination and non-job related testing which gave rise to this lawsuit and the need for a Court Order to prevent their recurrence in the future.

21. In sum, the modified Plan proposed by the Board of Education warrants acceptance by the Court. It gives every promise of producing a fully constitutional procedure as mandated by this Court and the Court of Appeals. The simplification of procedures for developing new examinations with the attendant reduction in the need to report to plaintiffs on a step-by-step basis will reduce the occasion for further dispute among the parties and appearances before the Court. In view of its acceptance by the plaintiffs the modified Plan offers the prospect of prompt resolution to this protracted litigation.

22. For these and all the foregoing reasons, plaintiffs respectfully submit that the Court should grant the motion of defendants Board of Education and Chancellor for an Order modifying its Order of March 25, 1975, in the manner described in their motion dated April 9, 1976.

Jeanne R. Silver
JEANNE R. SILVER

Sworn to before me this
26th day of April, 1976.

Elizabeth B. DuBois

ELIZABETH B. DuBOIS
Notary Public, State of New York
No. 31-6109100
Qualified in New York County
Commission Expires March 30, 1976

JEANNE R. SILVER
Attorney at Law
20 WEST 40TH STREET
NEW YORK, N. Y. 10018
(212) 354-6100

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September 23, 1975

Bernard Richland,Esq.
Corporation Counsel of the City of New York
Attention: Leonard Bernikow, Esq.
Municipal Building
Room 1643
New York, New York 10007

RE: Chance v. Board of Examiners

Dear Mr. Bernikow:

Pursuant to the discussion in our meeting with Harold Siegel and Ray Greenstein earlier this month, I am setting forth in this letter a summary of plaintiffs' primary objections to acceptance of the AIR Report dated June 1975 (hereinafter, "Report") as the prototype job analyses and recommendations required by the Court's Order and the Plan annexed as Exhibit "A" thereto (hereinafter collectively, the "Order"), dated March 25, 1975. These comments were prepared without benefit of the five "reviews" which you have promised to furnish shortly and we reserve our right under the Order to have the Board of Education consider our further comments after we study the material. Meanwhile, I understand that you will transmit this letter to Mr. Siegel for submission to the members of the Board and will subsequently try to arrange a further meeting at which plaintiffs may discuss the matter with Board members or an appropriate subcommittee.

The following comments do not represent the views of plaintiffs' counsel alone. We have had formal consultation with a panel including the school principals, two testing experts, of whom one has specialized in job analysis; a job analyst in a major private company and two distinguished educators involved in the preparation of professional educational staff. Their views are unanimous that compelling reasons, including the following, preclude the use of the Report in its present form or substance as a basis for developing licensing procedures:

1. Lacks Requisite Job Analysis

The Court's Order in this case requires a "job analysis and description for each position." (Order, Ex. "A", p. 5.) Although the extensive study has a section called "Results" it contains no section which purports or could be said to fulfill this requirement. The analysis apparently must be extrapolated from the lists of "major duty areas" and "tasks" included in the "job inventory" checklists and "minimally acceptable standards" questionnaires. However, those lists are so long, comprehensive and filled with detail that they confuse rather than clarify the issue of what each job really is (see, e.g., Report, Fig. 12, p.70 et seq.). As one principal pointed out after reading the study, no one in the job performs all those tasks, so the checklists really describe no position.

Exhibit "1"

The fact that this diffuseness makes it very difficult even for experts to analyze the AIR Report is in itself a ground for holding the study inadequate to comply with the Court Order in this case. The plaintiffs and the Court are entitled to a job analysis which they can understand and evaluate for compliance with legal requirements.

The absence of summary descriptions and analyses of the positions involved also marks the Report as fatally incomplete under the Order and precludes its use to validate employment tests as required by the Testing and Selecting Employees Guidelines of the Equal Employment Opportunity Commission (hereinafter, "EEOC Guidelines") 29 C.F.R.1607.5. The EEOC Guidelines have recently been reaffirmed by the United States Supreme Court as definitive authority on test validation in an opinion which also stresses the crucial role of determining the "important elements of work behavior which comprise...the job." Albemarle Paper Co. v. Moody, 86 Sup.Ct. Rep.8,31 (1975). The Board of Education which has exclusive responsibility for job analysis under the Court Order, must furnish the Board of Examiners with a concise and definitive statement of those elements of the prototypical positions before the latter may proceed with its responsibility to develop and validate new licensing procedures.

2. Inadequately Defines Elements of the Jobs

Apart from its failure to consolidate its findings into a concise analysis or job description, the Report fails to convey any real sense of what the jobs under study are. Their characteristics purport to be set out in descriptions of 19 major duty areas and well over 100 sub-tasks. All our experts agree, however, that the 19 duty area descriptions (Report, pp. 123-4) are too general to adequately characterize the positions, while the elaborate breakdown of constituent tasks (Id., Fig. 12, pp. 71 et seq.) is too atomistic to convey a meaningful description of any of the supervisory roles.

Moreover, the task descriptions are imprecise and partial. An adequate task description says "Who, What, Where, When and Why" a function is performed. It must contain not only a description of the action taken toward completion but the manner in which it is handled and the goals to which it is directed (or outputs it is intended to produce.) Job Analysis: A Guide for State and Local Governments (U.S. Civ. Serv. Comm. Wash.,D.C. 1973) p.3 (hereinafter, "Civil Service Guidelines").

AIR's task descriptions typically omit one or more of these essential elements, most persistently and importantly, the output information or "Why." As a result, and again to quote one of our experts, "the lack of controlling definitional language in the task statements and the lack of consistency in the way in which tasks are structured may limit the interpretation that can be made as to what they mean vis a vis job performance and required competencies." Such descriptions do not afford adequate guidelines for test development or validation.

3. Unreliable as Indicator of Current Job Requirements

The Order requires that the job analysis "set out and fully elaborate all of the important qualities and behaviors necessary for performance of the job." (Order, Ex. "A" p.5) Thus, it requires a study of sufficient scope and authoritativeness to permit an inference that the job descriptions are both comprehensive and accurate in identifying those qualities currently deemed important to fulfilling the demands of the positions. Serious gaps in the AIR inquiry preclude such an inference about the Report.

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(A) The Order requires that in drawing up the job analyses "pertinent research literature shall be taken into account." (Order, Ex. "A", p.5) AIR's extremely limited reference to written materials focused on a few unrepresentative documents including the job descriptions relied on by the defendants in announcing their old unconstitutional tests, (Report, p.4.) Plainly relevant current materials of the Board's own recent sponsorship were ignored.[1] So was an important New York State study of the influence of specific school principal behaviors on reading achievement[2] and the growing literature on nation-wide experiments with competency-based teacher certification.

(B) AIR's consultation with the Board as employer, an accepted starting point for job analysis, was also unduly limited. Although orientation meetings are reported in the study, there is no indication that these attempted to define current expectations of the Board or its experts in school personnel and administration regarding the perameters of the jobs under study.

(C) In the context of an adjudicated history of past discrimination and non-job related testing, the study completely failed to assure that the perspectives of minorities and personnel hired since the old examinations were enjoined would be fully reflected in the job analysis. The Report provides data on the representation of minorities and recent appointees in only two of the many samplings of incumbents upon whose responses the study so heavily relied. The representation of minorities and recent appointees in these samples reflected their still small representation in the system. (Report, p. 24 et seq.), while there appears to be no basis for any inference about the representation of these groups in the other samples used. However, even if all the samples drawn were representative of the present distribution of minorities and new appointees in the system the "pooled" judgments of these samples could not be validly used as the basis for the job analysis without making a determination, which this Report did not even attempt, of whether the views of those hired under the old system about the characteristics of their positions differed from those of people who were excluded. Otherwise, the possibility would exist that the job analysis for the new licensing system was based upon a special viewpoint as to important tasks, knowledges and skills held by incumbents selected under the old. That would plainly be unconstitutional.

[1] See e.g., "Role, Functions, and Competencies of the Elementary School Principal as an Educational Leader": Statement by the Program for the Development of the Elementary School Principal as an Educational Leader sponsored by Bank Street College of Education, the Learning Cooperative of the Board of Education of the City of New York and the Chase Manhattan Bank. (Bank Street College of Education, 1974.) Also Memorandum #43, June 27, 1975 from Irving Anker re "Competencies of Pupil Personnel Administrators," June 27, 1975.

[2] "School Factors Influencing Reading Achievements: A Case Study of Two Inner City Schools" State of New York, Office of Education Performance Review (March 1974)

(D) Quality control is another element overlooked by the study. The Civil Service Commission Guidelines state: "The employees selected [for interviews] should know the job fairly well and range from at least average to superior ability in performing their duties." (Op. cit. supra, p.23.) The Order's recommended method of job analysis relied on observation and self-report of incumbents with cross-checking in each case by both the incumbent's regular supervisor and a task analysis expert. Thus there was considerable assurance that the job descriptions would not be based on the perceptions of relatively less competent personnel. AIR eliminated this feature of the Order's job analysis design without providing an alternative control. The study relied primarily on sampling of the views of large numbers of incumbents selected without reference to performance record and who were not observed by anyone. The Report reflects no effort to assure substantial input from professionals regarded as highly expert and competent.

(E) A further deficiency in the scope of the inquiry, in plain violation of the Court's Order, is the inadequate consultation and incorporation of perceptions of the jobs by community school boards and parent groups. Parents were not consulted at all. After excluding boards or their constituents in the early stages, the researchers visited with 8 among 32 of them. That their views got little weight is clear. For example, the Report notes agreement among the boards that "educational leadership" is the essential aspect of the supervisory positions (Report, p.35). However, because there was no such agreement on the "constituent elements" of educational leadership this consensus appears to have been disregarded and leadership received minimal perfunctory attention in the inventory of tasks. This disregard of the boards' differences no less than the agreement among them plainly violates the Order's requirement that "to assure meeting the differing needs of various districts," "the perceptions of the job revealed by Community School Boards and/or Parent Associations.... shall be considered in the development of the job description." (Order Ex. "A", pp.3-4.)

4. Inadequate Consideration of Differences Among Districts

The study's failure to consult community boards sufficiently, already discussed as limiting its reliability, has special implications in view of the new type of licensing system contemplated by the Court Order. Unlike previous systems, the procedures described in the Order are designed "to build in performance evaluation as a key component of the licensing process." For this reason, preliminary entry level tests may screen out only those applicants who fail to meet levels of minimal acceptable performance in areas "deemed essential by the job analysis." (Order, Ex. "A", p.15.) However, the Step 1 process has the second purpose to provide a comprehensive assessment of the individual's strengths and weaknesses in all areas so that employing authorities may "select those most highly qualified for service in their particular schools and districts." (Order, Ex. "A", pp. 1-2, 8, 15.) The elaborate and potentially expensive, time consuming procedures contemplated for the Step 1 testing process are largely geared to this second objective on the assumption that profiles geared to their special needs will be "useful to the new Community School Board type of administration." (Order, p.1, 8-16.) Remarkably,

under the circumstances, neither the inquiry nor analysis in the Report reflect any systematic attempt to determine whether those responsible for governing or administering the 32 different districts, or their 900 schools, have any special perceptions or expectations of supervisors not generally held by all districts. As already noted, where such information seemed to emerge, it was disregarded. It is inconceivable that the Board of Examiners be permitted to proceed with the elaborate Step 1 assessment program unless such information is provided.

5. Fails to Identify "Essential" Areas

In view of the Court Order's specific requirement that disqualification at Step 1 of the new licensing procedures be only for failure to perform adequately in areas defined as "essential" by the job analysis, determination of the essential as opposed to merely useful or even important elements of the supervisory positions is crucial to an analysis which meets legal requirements. Yet the job analysis report completely fails to discriminate the "essential" from the non-essential areas and it is not even clear that it purports to do so.

The Report's numerous tabulation addressing the importance of various job elements are not claimed to define "essential elements" of the jobs and, in any case, yield no conclusion which could be said to provide such definitions. A number of different studies and tabulations purport to address the relative importance of the major duty areas with respect to each position and others generate a list of the 20 most important tasks. (Report, pp. 58-63.) A third analysis, based on responses to the so-called minimally acceptable standards questionnaires, is offered as "additional guidance" to test developers in determining what should be included or excluded from the procedures. (Report, p.68.) It is not suggested that any of these data can be used alone for any purpose. Nor is any attempt made to correlate them or reach any conclusions based on what they jointly reveal. Our own examination suggests that their correlation is impossible: we find, for example, that only a fraction of the 20 "most important tasks"identified by the Report for each position fall within the"major duty areas"identified as most important for the same job. Moreover, the 20 "most important tasks" and each position account for little more than 20% of the average incumbents' total time.

As for the minimally acceptable standards study, the Report itself indicates that the findings can not be taken even to indicate what items should be tested let alone what areas are "essential",recommending instead that "all data[including the inconclusive studies mentioned above] should be used in paring the list down to feasible size." (Report, p.69.) In any event, it is doubtful that these results can validly be used in view of the gravely inadequate sample on which they are based and the response rate of about one third. (Report, pp. 48, 68.)

Finally, we submit that any attempt to discriminate "essential" from non-essential tasks based on the data furnished by this study would prove impossible. Relative importance can not seriously be ascribed to a list of ambiguous tasks developed in a vacuum of perspective regarding the purpose, emphasis and intended outputs of the job. The unanimous view of our experts, including technicians and academicians is that the goals and objectives for the positions are the missing first premise of the AIR job analysis; a fortiori, they are the missing starting point for meaningful determination of what is "essential" for effective performance in these posts.

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6. Fails to Establish Necessity of Listed Knowledge and Skills

The most significant defect in the Report is the totally unreliable data on knowledge and skills allegedly required for the jobs. The ability to prove that the knowledges/skills are necessary for effective performance will determine the validity of tests developed to determine whether applicants possess them. The study does not provide the basis for making such a showing. The pertinence to actually doing a job of knowing what books say about how to do it must be substantiated, not merely presumed. AIR derived its basic knowledge/skills list from staff analysis of responses by incumbents to a questionnaire about the knowledge and skills pertinent to effective and ineffective performance in the so-called "critical incidents." (Report, p.38.) Most of the respondents were hired when the relevance of a great deal of knowledge to job performance was simply assume and they presumably shared the perspectives which gave rise to those assumptions. Subsequent inquiries to validate these findings asked other incumbents whose tenure is unreported to verify and rank for importance the knowledge/skills on this list. (Report, p.68.) The possiblity cannot be ruled out that the inquiry techniques at both stages encouraged the respondents to mention knowledges/skills which they themselves only speculated might be important. In any event, our testing experts do not believe the conclusions of laymen that relationships exist between job performance and particular knowledges and skills which have never been validated as relevant even to comparable positions permit an inference that tests addressing such knowledges and skills are content valid.

The study's only attempt to validate this information professionally was in on-site observations by two-person teams of incumbents and AIR personnel. However, rather than supporting the other findings, the team reports revealed only "considera overlap" but "often disagreement" among members "on all of the skills and knowledge required to perform a specific task." (Report, p.38.)

The casual method by which the knowledge/skill lists were developed is clear reflected in their contents. The knowledge descriptions are imprecise. Our experts believe that many of the supposed "knowledge" requirements would be irrelevant, at least if one had a corresponding skill. Thus one of the educators on our panel stated:"it is not at all clear what knowledge or theory does or should underlie the kinds of skills and tasks enumerated. What is the evidence that (for example) 'knowledge of guidance principles' or 'knowledge of human relations,' is related to skillful practice as an administrator or supervisor?" The significance of this confusion and the pitfalls it presents for legally valid test development were pointed out by one of our testing experts: "The knowledge checklist includes many items which are more reasonably described as skills. For example, 'knowledge of team teaching techniques,' is in and of itself not important to a principal; what may be important is the skill at designing, and implementing a team teaching progra Any mislabeling of a skill as a knowledge opens the door to a proliferation of the meaningless multiple choice examinations of peripheral knowledge which have no demonstrated relation to the ability to plan a program and see that it is carried c

[1]Community district interviews are identified as another source of these lists (p.38 despite the Report's general position that those interviews "did not provide much substantive data." (p.133.)

...

The study also fails to assess the relative importance of the knowledge/skills listed, either independently, or, as would seem more appropriate, in terms of the importance of tasks and duties to which they are supposedly pertinent. The knowledge/skills list is sorted only to match the broadest categories in the task inventory. Specific knowledges and skills are nowhere matched to specific tasks. Thus, if test items were to be developed for the 20 "most important" tasks or the 19 "major" duty areas, or "essential" areas of performance determined from these data, there is no indication of what knowledges and skills would be tested.

The only direct attempt to determine the relative importance of the over 100 knowledges and skills listed was through the minimally acceptable standards questionnaire survey in which, as already mentioned (supra, p. 5.), the sample was clearly too small and the response rate less than one-third. Moreover, the responses to this questionnaire are the ones which the Report described as having limited utility for the purpose of discriminating between important and unimportant data without reference to other studies of importance presented in the Report. (supra. p. 5. ; Report, p. 69.) However, there are no other studies on the importance of knowledges and skills.

7. Unsupported Recommendations for Future Job Analyses

The Court Order contemplated that the prototype job analyses would serve as "models for future job analyses to be developed by the Board of Education." (Order, Ex. "A", p.6.) The AIR study cannot possibly serve as a model for future procedures. The Order also required the consultant to "recommend a program for the selection and training of persons to conduct subsequent job analyses." (Ibid.) Pending a decision as to what modifications in analytic techniques should be made to overcome the problems with the AIR study, there seems no purpose in giving full consideration to AIR's recommendations at this time. However, two statements require immediate comment.

The Report states (p.129): "Future job analyses for the New York school system can probably best be carried out largely as an in-house effort with a minimal amount of guidance and support by an outside consultant proficient in job analysis methods." In the light of the deficiencies in the AIR Report, and the lack of evidence that the staff of the Board of Education had an independent and successful role in the project, we submit that this recommendation is premature.

The last page of the Report recommends that visits with community school boards be omitted in future analyses unless "necessary to obtain cooperation for analysis activities or acceptance of the results..." (Report, p.133.) We have already pointed out that the minimal community board consultations and disregard of community views in this study were incompatible with the Court's requirements, and the recommendation to restrict them further is of course even more so.

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The foregoing comments have attempted to identify some of the most serious and legally troublesome deficiencies in the AIR Report—deficiencies which, in themselves, require its rejection as the job analysis required by the Court Order and make imperative a meeting among the parties to discuss the matter further. Plaintiffs do not, of course, waive the right to present other considerations regarding the Report in the context of such meeting, or otherwise. Nor do we mean to suggest that the Report does not contain valuable and usable data or conclusions. For example, we are impressed with the recommendation for combining some supervisory examinations and titles (Report, pp.123-7). Support for these recommendations, at least in the case of some of the positions, is provided by AIR's findings both that there is significant overlap among the prototype positions as to the most important major duty areas and that the differences in emphasis among the three positions are largely a function of the greater sophistication and leadership component required at higher supervisory levels (Report, pp. 58-63).

We believe there is room for useful discussion among plaintiffs and defendants' representatives as to how these recommendations can appropriately be implemented as well as to the urgent matter of how to remedy the Report's patent inadequacies as a basis for test development. Thus, I would like to repeat our request for an early meeting to discuss these matters with appropriate members of the Board.

Very truly yours,

Jeanne R. Silver

JRS/ll
cc: Saul Z. Cohen, Esq.

HAND DELIVERY 9/23/75

Affidavits by Ethel Fitzgerald and Saul Z. Cohen,
plus exhibits, sworn to May 5, 1976

LEGAL FILE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

BOSTON M. CHANCE, et al., :

Plaintiffs, :

- against - :

THE BOARD OF EXAMINERS AND THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al., :

Defendants. :

----------x

70 Civ. 4141
(M.P.)

DEFENDANT BOARD OF EXAMINERS' AFFIDAVITS IN OPPOSITION TO THE MOTION TO MODIFY THE CONSENT JUDGMENT

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER
Attorneys for Defendant Board of Examiners

425 Park Avenue
New York, New York 10022
759-8400

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

BOSTON M. CHANCE, et al., :

Plaintiffs, : 70 Civ. 4141 (M.P.)

-against- : AFFIDAVIT

THE BOARD OF EXAMINERS, et al., :

Defendants. :

----------X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ETHEL FITZGERALD, being duly sworn deposes and says:

1. I am the member of the Board of Examiners in charge of By-laws and Legal Matters and am fully familiar with the facts herein. This affidavit and the annexed affidavit of Saul Z. Cohen, counsel to the Board of Examiners, are submitted in opposition to the motion of the Board of Education and the Chancellor of the City School District (hereinafter collectively the "Board of Education") to modify the Consent Judgment herein.

Introduction

2. The annexed Cohen Affidavit demonstrates that the Board of Education's proposed modification is nearly identical to proposals made by plaintiffs during settlement discussions between the parties as long ago as 1972 and 1973. This affidavit demonstrates that the Board of Education's proposal is totally objectionable and contrary to New York Constitutional and statutory law.

3. The true purpose of this motion is to bring about a substantial change in the New York Education Law which underlies the permanent Plan for plenary examinations which is part of the Consent Judgment. Thus, the "merit and fitness" system contemplated by New York law will be vitiated. The Board of Education's purported justifications for this motion are, upon analysis, mere pretexts. Further, put in historical context, the Board of Education's current motion is neither its first attempt to interfere with the Board of Examiners' functions, nor, as shown in the annexed Cohen Affidavit, its first attempt to destroy a settlement reached between the parties in this case.

The Functions of the
Board of Examiners Under
New York State Law

4. The Board of Examiners was created by New York State law nearly eighty years ago as part of the surge of civil service reform. The Board was created to insure that New York City's schools would be staffed with persons selected solely upon their "merit and fitness" for the position as determined by "objective" examination by the Examiners rather than upon extraneous factors, such as political or other affiliations.

5. Over the years, certain forces have attempted to abolish or emasculate the Board of Examiners and its examinations. Since the Board of Examiners is an independent state agency as well as, for certain purposes, part of the Board of Education,* there has often been an administrative tension between the two agencies. In fact,

* Thus, e.g., the Board of Examiners' budget comes from the Board of Education.

the instant motion is not the first attempt by the Board of Education improperly to impair or control the Board of Examiners' independent exercise of its powers. See In the Matter of the Investigation of the Board of Examiners of the City of New York by the President of the Board of Education (N.Y.S. Education Dept., January 23, 1926); In the Matter of the Jurisdiction of the Board of Examiners of the City School District of New York, 25 State Department Reports 275 (N.Y.S. Education Dept., February 9, 1921).*

6. Even when the administrative framework of the entire New York City school system was substantially changed in 1969 as part of the School Decentralization Law, the powers and functions of the Board of Examiners over determinations of the "merit and fitness" of both teaching and supervisory personnel were retained. Even after the passage of the 1969 School Decentralization Law, other legislative attempts have been made to abolish the Board of Examiners or to limit its powers. But the New York State legislature has rejected each of these attempts. The Constitutional and statutory provisions under which the Board of Examiners functions today are set forth in paragraphs 5-7 of the Rockowitz Affidavit submitted in support of the Board of Examiners' motion to implement the Consent Judgment. They are essentially the same today as they have been for many years.

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*Portions of these determinations by New York State's Education Commissioner are quoted in the Board of Examiners' accompanying memorandum of law in opposition to this motion to modify the Consent Judgment.

7. The Board of Education's instant motion to modify the Consent Judgment must be viewed against the background of the New York State Constitutional and statutory framework under which the Board of Examiners functions and the past attempts by certain forces to abolish or emasculate the Examiners and their examinations.

8. Indeed, in view of the New York State legislature's past unwillingness to tamper with the "merit and fitness" system, the Board of Education is apparently of the view that it would be easier to attempt to use the processes of this Court to vitiate the State statutory scheme than to attempt passage of a bill by the legislature.*

The Board of Education's Proposal for Selection and Licensing of Supervisors Would Vitiate the Requirements of New York Law

9. The Board of Education's proposal for so-called "unassembled examinations" using a "profile resume application (P.R.A.) technique" together with on-the-job evaluations conducted by the Board of Education or by a community school board (i.e., by appointing authorities), rather than by the Board of Examiners, strikes at the heart of New York's "merit and fitness" system of "objective" plenary examinations "prepare[d] and administer[ed]" by the Board of Examiners. Further, the Board of Education's proposal is at odds with the requirement that examinations be job-related and thus free from

*As is indicated below, it would appear that the Board of Education's purported justifications for the instant motion are merely after-the-fact rationalizations for their attempt to vitiate New York's statutory scheme and implement their own view of how supervisors should be chosen.

unlawful discrimination.

10. Preliminarily, it should be noted that by its very nature, the Board of Education's proposal violates a fundamental aspect of New York law. The Board of Education's proposal seeks to deprive the Board of Examiners of its statutory function of "prepar[ing] . . . objective examinations." Education Law § 2590-j.3(a)(1). The New York State Education Commissioner long ago held that the mandate to "prepare" such examinations means that the Board of Examiners is to have

> ". . . entire control over the examination of applicants, which includes the preparation of questions, the rating of answers and such other investigation as may be necessary to ascertain the fitness of applicants for licenses. As to these matters the power of the board of examiners may be exercised exclusive of control by the board of education and the superintendent of schools [now known as the Chancellor]." In the Matter of the Jurisdiction of the Board of Examiners, supra 25 State Dept. Reports 275, 280-28 (N.Y.S. Education Dept., February 9, 1921). See also In the Matter of the Investigation of the Board of Examiners, supra (N.Y.S. Education Dept., January 23, 1926).

Thus, under New York law the determination of the content of supervisory examinations is within the exclusive province of the Board of Examiners. This motion seeks to destroy that requirement by ordering the Board of Examiners to administer a proposal which incorporates the Board of Education's views as to the content of supervisory examinations.

11. A review of the Board of Education's proposal itself also demonstrates that it would violate New York law. Thus, phase one of the Board of Education's

proposal calls for a so-called "unassembled examination" using a "profile resume application (P.R.A.) technique". In other words, instead of an "objective" examination to determine whether a candidate satisfies even minimum standards of "fitness" -- i.e., the abilities, bodies of knowledge and skills necessary for the supervisory position -- the candidate or some third party will prepare a resume setting forth the candidate's background, educational attainment and experience. The P.R.A. approach does not make possible the objective testing of applicants in those very areas demanded of supervisors in the New York City school system today -- judgmental ability, speaking ability, ability in human relations, evaluative ability, as well as the substantive content areas required for the particular supervisory position -- all of which would be examined under the Plan for plenary examinations which is presently part of the Consent Judgment. (See Exhibit B to the Rockowitz Affidavit.) That Plan sets forth a flexible system of examination procedures which all sides agreed as long ago as May 1974 was the basis for examinations which are job related, non-discriminatory and comply with New York law.

12. Obviously, this P.R.A. approach, which is not an examination at all, is designed to circumvent the requirements of New York's Education Law:

A. Education Law § 2590-j(2) provides that:

> "The chancellor shall promulgate minimum education and experience requirements for all teaching and supervisory service positions which shall not be less than minimum state requirements for certification. . . ."

Under the Board of Education's proposal, this act by the Chancellor will itself be the "examination" since the Board of Examiners will only determine whether the candidate has complied with the Chancellor's requirements. Education Law § 2590-j also provides that:

> "3. (a)(1) The board of examiners shall prepare and administer objective examinations to determine the merit and fitness of all candidates for . . . supervisory service positions. . . .
>
> * * *
>
> (b)(2) Examinations for all supervisory service positions shall be open qualifying." (Emphasis added)

Thus, since it is clear that the Education Law requires a candidate both to comply with the Chancellor's "education and experience requirements" and to pass an "objective examination", the Board of Education's proposal violates state law. It would merely satisfy one requirement - i.e., that the candidate satisfy eligibility requirements.

B. Since the Chancellor will determine the content of the "unassembled examination", the Board of Examiners will not "prepare" the examination, in violation of the express requirements of the Education Law. Further, while the present permanent Plan is a flexible examination system permitting the Board of Examiners to use various examination procedures and techniques, the Board of Education's proposal would lock the selection system into one particular kind of selection device -- a resume evaluation.

C. The "unassembled examination" utilizing a review of the applicant's resume is patently not the "objective examination" required by the Education Law. Instead of measuring an applicant's fitness, it will measure his ability to prepare the best possible resume or application -- or perhaps to have someone else do so for him. Instead of an impartial examination, it will also afford a wide opportunity for inequities and subjective decisions.

D. The Board of Examiners' function with regard to the "unassembled examination" would be solely one of "review, verification and analysis of record." (Board of Education's Proposal, p. 1, Exhibit 1 to the Christen Affidavit.) Thus, the Board of Examiners would be reduced to a clerical and administrative agency whose function is to verify the contents of an applicant's own resume. In violation of the Education Law, it would not permit the Examiners to determine fitness or to use their discretion in preparing each examination to measure the special abilities, skills, and knowledge necessary for that position.

E. Each and every applicant who satisfies the "minimum education and experience requirements" promulgated by the Chancellor will obtain a provisional license and be eligible for appointment. So long as the Chancellor's requirements are met, the Board of Examiners will not have it within their power to rate an applicant unqualified.

13. Although the Board of Education has included the requirement that a candidate complete a single written essay as part of phase one of their proposal, the Board of Examiners can "evaluate and comment on the candidate's written communication skills" (Proposal, p. 3), but it is unclear whether they would be empowered to evaluate and comment upon the applicant's substantive response to the subject of the essay. Moreover, no matter how poor the applicant's communication skills and no matter how unfit the applicant appears to be from his substantive response, the Board of Examiners can comment, but it cannot declare the applicant ineligible.

14. Thus, phase one of the Board of Education's proposal would require that an applicant who is totally unfit to serve as a supervisor be provisionally licensed and declared eligible for appointment if he satisfies the Chancellor's eligibility requirements and can express himself well in writing. This result would be in total contravention of the requirement set forth in New York's Constitution and Education Law that an applicant may not serve as a supervisor unless he demonstrates his "merit and fitness" for the position by passing a qualifying objective examination prepared and administered by the Board of Examiners.

15. The second phase of the Board of Education's proposal is also totally deficient when measured by the requirements of New York law. It calls for the appointing authorities, rather than the Board of Examiners, to conduct on the job evaluations of each provisionally licensed supervisor after one year on the job. The Education Law

requires licensure based upon objective qualifying examinations "prepare[d] and administer[ed]" by the Board of Examiners. Thus, the Board of Education's proposal is objectionable for two reasons. First, since the appointing authorities will conduct the evaluations it removes part of the examination process from the Board of Examiners' control. The Board of Examiners would not make the final determination of the applicant's fitness for licensure. Second, it raises the possibility that subjective factors will enter into licensure determinations and therefore runs afoul of the requirement that supervisory examinations be "objective".*

16. Finally, comment must be made on part V of the Board of Education's proposal dealing with the "Board of Examiners Staff". First, it is hypocritical since almost a year ago the Board of Examiners turned over to the Board of Education proposed resolutions to restructure the Examiners' staff by civil service tests. Second, it is unnecessary because the Plan which is part of the Consent Judgment presently calls for restructuring and retraining the Examiners' staff. (See pages 20-21 of the present Plan, a copy of which is part of Exhibit B to the Board of Examiners' motion to implement the Judgment.) Third, it is inconsistent since if the Board of Education's proposed modification were adopted, the Board of Examiners would be reduced to the role of clerks checking whether

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*In contrast, under the permanent Plan for plenary examinations which is part of the Consent Judgment, the Board of Examiners itself conducts the on-the-job evaluations of provisionally licensed supervisors and determines whether the person is fit for permanent licensure.

applicants satisfy the Chancellor's eligibility requirements. Since that would be so, why should the Examiners' staff receive "training in E.E.O.C. testing and validation guidelines." (Board of Education's Proposal, p. 6). Fourth, to an extent it is not relevant to the subject of this lawsuit which has nothing whatsoever to do with employment opportunities on the staff of the Board of Examiners.

Upon Analysis, the Board of Education's Purported Justifications for the Modification Sought Are Without Bas s

17. As is shown above, the Board of Education's proposal for the selection and licensing of supervisors would permanently vitiate the requirements of New York's Constitution and Education Law. As is shown below, each of the justifications advanced by the Board of Education for their modification of the Consent Judgment herein not only fail to meet the legal requirements for the modification of that Judgment (see the Board of Examiners' accompanying memorandum of law), but are, upon analysis, without merit.

I. The Supposed Inadequacy of the Prototype Job Analyses

18. Under the permanent Plan for plenary examinations, the first step in the preparation of Step 1 examinations is the development of prototype job analyses of three prototypical supervisory positions by American

Institutes for Research ("AIR"), an independent consulting firm chosen by the Board of Education. (See generally Rockowitz Affidavit, paras. 19-29). AIR is a recognized and experienced non-profit organization specializing in the development of testing techniques. In January 1975, the Board of Education submitted to this Court a copy of 45 of the 46 pages of AIR's Proposal, together with affidavits of Leonard Bernikow, the Board of Education's attorney, and Harold Siegel, the Board's secretary. (Copies of these affidavits and of AIR's Proposal are annexed hereto as Exhibit 1.) AIR's related experience is set forth in pages 13-22 of its Proposal. It includes several projects for New York City's Department of Personnel, as well as numerous projects for both the Federal Government and private industry.

19. As is shown in the Siegel Affidavit, the AIR Proposal was accepted by the Board of Education and the Board authorized the execution of a contract with AIR. As is shown in the Christen Affidavit, para. 13, the Board of Education's contract with AIR called for the payment of $36,699 to AIR. What is not set forth in the Christen Affidavit, but is apparent from AIR's Proposal, is that, under its contract, AIR is obligated to

> ". . . (1) analyze three supervisory positions within the New York City School System in such a way as to constitute prototypes for future analyses of other positions, (2) review existing job titles for the appropriateness of combining titles and/or creating new titles, and (3) recommend a selection and training program for job analysts." (AIR Proposal, p. 1.)

Thus, other than preparing three job analyses, AIR is obligated to do a number of things -- create the analyses in such a way that they will serve as prototypes for analyses of other positions; review all existing job titles; and prepare a training program for in-house Board of Education personnel who will prepare future analyses.

20. The Board of Education has contended in its motion papers that the instant motion should be granted because "the first job analysis conducted pursuant to the Plan proved inadequate and had to be rejected." (Christen Affidavit, para. 11(a).) It seems clear to the Board of Examiners that whether or not the three prototype AIR job analyses are adequate is not the real issue. Every expert (including plaintiffs' own testing expert in this case) and every court which has considered the question, has concluded that a proper job analysis is a prerequisite to the development of job related, non-discriminatory examinations. The EEOC Guidelines on Employee Selection Procedures are in agreement. Thus, if there are to be objective qualifying examinations as required by New York law, job analyses must be prepared. If the prototype analyses prepared by the Board of Education's consultants are actually inadequate, their defects should be remedied or, if that is not possible, they should be done over.

21. As noted above, there can be no question that job analyses are necessary for the creation of job-related examinations. In this very case, the affidavit of plaintiffs' own testing expert, Dr. Richard S. Barrett, submitted in support of plaintiffs' motion for a preliminary injunction in 1970, stated that:

". . . for a test at this level [i.e. the supervisory level] to be justified on the basis of content validity, it is necessary that the job be analysed [sic], good and poor performance defined, questions relevant to significant aspects of the job prepared, level and acceptability of answers defined, and test scorers trained and supervised." (Barrett Affidavit, sworn to October 15, 1970, para. 4)(Emphasis added.)

22. Plaintiffs' brief in the Second Circuit seeking affirmance of the preliminary injunction contended that the performance of a job analysis is "the first and essential step in developing a job-related examination." (See Brief for Plaintiffs-Appellees, Appeal No. 71-2021, p. 4). Apparently, plaintiffs are still of the same opinion that "valid job analyses are the essential underpinning of job-related examinations " (Affidavit of Jeanne R. Silver, sworn to April 26, 1976, para. 14).*

23. When Judge Mansfield rendered his decision dated July 14, 1971 granting plaintiffs' motion for preliminary injunction herein, he specifically held that in order to create a job-related examination which will be validated by "content validity"** a job analysis of the position in question must be prepared:

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*Since plaintiffs concede that a job analysis is necessary for the construction of a job-related examination but nevertheless are willing to forego the use of job analyses in the future here, then, logically, it must necessarily follow that either the Board of Education's proposal would not lead to job-related examinations or the Board of Education's proposal does not require examinations.

**As defined by Judge Mansfield in his July 14, 1971 opinion, "validation" of an examination is a means of showing that the examination is "reasonably capable of measuring 'what it purports to measure'". One of the means of validating an examination is by demonstrating "content validity" which Judge Mansfield defined to mean ". . . insur[ing] that as to subject matter the examination will elicit from the candidate information that is relevant to the job for which it is given." 330 F. Supp. 203, 216

> "In constructing an examination that will have 'content validity,' the preferred course is first to have an empirical analysis made of the position for which it is given, usually by experts or professionals in the field. Such an analysis requires a study to be made of the duties of the job, of the performance by those already occupying it, and of the elements, aspects and characteristics that make for successful performance. Questions are then formulated, selective procedures established, and criteria prepared for examiners that should elicit information enabling them to measure these characteristics, skills and proficiency in a candidate and determine his capacity to do the job satisfactorily." 330 F. Supp. 203, 216.

24. Both the United States Supreme Court in Albemarle Paper Co. v. Moody, 422 U.S. 405, 429-435 (1975), and the Second Circuit in a number of cases other than Chance have also held that the creation of a job analysis is required before a job-related examination can be constructed as content valid. See e.g. Vulcan Society v. Civil Service Com'n, 490 F.2d 387, 393-397 (2d Cir. 1973); Bridgeport Guardians v. Bridgeport Civil Service Com'n, 482 F.2d 1333, 1337-1338 (2d Cir. 1973).

25. Furthermore, the EEOC "Guidelines on Employee Selection Procedures," 29 CFR Part 1607, also provide that in order to create content valid examinations a job analysis must first be conducted for the position in question. Thus, the Guidelines provide that

> ". . . evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency tests) or construct (in the case of trait measures)." 29 CFR § 1607.5(a). See also 29 CFR § 1607.5(b)(3).

26. Because of the universal recognition that job analyses are required before preparing a job-related examination, it is clear that the adequacy of the prototype job analyses are not a genuine issue. Assuming arguendo that those analyses are totally inadequate and unacceptable, at most this would mean that the Board of Education would have to spend a sum of money, certainly no more than the $36,699 paid to AIR,* to have new prototype job analyses prepared. But the Board of Education's total operating budget for 1975-1976 is about $2.25 billion. Thus, it is quite clear that even the expenditure of another $36,000 for new prototype job analyses will not have a significant impact on either the Board of Education's budget or quality education in the New York City schools.

27. It was assumed above for the sake of argument that the AIR prototype job analyses are totally unacceptable. Although, as noted above, the Board of Examiners sees no purpose here in debating the adequacy of the AIR analyses, that assumption is open to substantial question for several reasons. First, the permanent Plan for plenary examinations (Exhibit B to the Board of Examiners motion to implement the Consent Judgment) required the Board of Education to obtain advisory opinions about AIR's prototype job analyses from persons from five groups:

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*If the $36,699 referred to in the Christen Affidavit is the total contract cost with AIR, even the total replacement of the AIR job analyses from scratch will not cost that much. As noted above, the Board of Education's contract requires AIR to do a number of things other than prepare three job analyses.

"1. A Community Superintendent or Central School Superintendent.

2. A college or university specialist in the relevant area.

3. A personnel specialist from outside the New York City School System.

4. An incumbent supervisor in the relevant category.

5. A Community School Board representative designated by the Chancellor."

Yet, the Board of Education has not seen fit to submit to this Court copies of each of the advisory opinions, or to even refer to all of them in its motion papers.

28. As indicated in the memorandum dated September 11, 1975 from Mr. Harold Siegel, the Board of Education's Secretary, to the members of that Board (a copy of which is annexed as Exhibit C to the Board of Examiners' motion to implement), the Board of Education obtained advisory opinions from six different persons. Yet, it has only referred to and furnished a copy of the opinion of Robert G. Owens, the most critical of all of the opinions.* So that the record is complete, it should be noted that the other advisory opinions are quite favorable to the AIR analyses and complimentary to AIR. (Copies of those other advisory opinions are annexed hereto as

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*One of Mr. Owens' major criticisms was that the AIR job analyses are not oriented to the future but rather reflect what supervisors do at present. However, the EEOC Guidelines (see 29 C.F.R. § 1607.5) in accord with other professional thought provide that job analyses are intended to measure knowledge, skills and behavior necessary for the position now. And the permanent Plan for plenary examination so provides.

Exhibit 2.) Thus, e.g., Seymour Bernstein of Sim Bernstein Associates, personnel consultants, concludes that "satisfactory procedures were employed in all steps" and that "in general, the consultants' procedures were found to be extremely comprehensive and in keeping with acceptable standards." Similarly, Mr. Nicholas Ciccheti, Superintendent of Community School District 11, concluded that AIR's analyses "were thorough and related to tasks" and that it "did a good job."

29. Second, in addition to the favorable reviews given to the AIR analyses by five of the six reviewers designated by the Board of Education, it is also noteworthy that Development Dimensions, Inc., the independent consulting firm which is to prepare the three prototype examinations from the AIR job analyses, also supported the adequacy of those analyses. Thus, Development Dimensions, Inc. concluded that:

> ". . . the AIR job analysis can be used by Development Dimensions towards the development of the prototype examinations in accordance with the final judgment of the Court in the Chance v. Board of Education case. In addition, we are confident the prototype examinations can be content validated in accordance with the Principles for the Validation and Use of Personnel Selection Procedures of the Division of Industrial-Organizational Psychology of the American Psychological Association and defended in Court by Development Dimensions." (See Exhibit D to the Board of Examiners' motion to implement the Consent Judgment.)

30. Third, although the Board of Education's motion papers emphasize the views of the Chancellor's

Advisory Council on Personnel Selection* as to the AIR analyses, that emphasis is quite misleading. Neither the Plan nor any provision of law delegates any power or function to the Advisory Council with regard to supervisory examinations or, for that matter, job analyses.

31. Moreover, none of the members of the Council are testing professionals who have expertise with regard to the proper content of job analyses. Further, it would appear that the Council was used by the Board of Education in an attempt to buttress a political decision previously made but lacking in support because of the favorable views expressed in the advisory opinions.**

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*The Council was created to aid the appointing authorities in administering the so-called "Circular 30" temporary system for the selection of "acting" supervisors which was adopted by the Board of Education following the issuance of a preliminary injunction herein. Its sole advisory function will, in large part, cease when the permanent Plan for a comprehensive system of plenary supervisory examinations is implemented. At that time, no person will be able to be selected for such a supervisory position who does not possess a license obtained by passing a plenary examination prepared and administered by the Board of Examiners.

**At the conference with this Court on January 22, 1976, the Board of Education was given an additional six weeks (to March 4, 1976) to carry out its responsibilities under the Plan with regard to the prototype job analyses. Although during 1975 the Council repeatedly requested an opportunity to express its views with regard to the job analyses, it was only after that conference, specifically at the Council's meeting on February 19, 1976 that it was requested to "review the [AIR] Report and send recommendations prior to the March 4, 1976 date." (Minutes of Meeting.). At that meeting, Mr. Frank C. Arricale, the head of the Board of Education's Division of Personnel, and the Executive Secretary of the Council raised the question "What does an examination add to state competency based certification?" and "strongly urged" the Council to communicate its views to the Chancellor. Dr. Gerald Brooks, Director of the Office of Community Liaison of the Board's Division of Personnel then drafted the letter which is Exhibit 2 to the Christen Affidavit.

32. To summarize,it is universally recognized that it is necessary to conduct a job analysis of a position in order to thereafter develop a job-related examination for that position. The Plan for plenary examinations which is now part of the Consent Judgment required AIR, an experienced consulting firm, to prepare three prototype job analyses. Despite overwhelmingly favorable opinions about those analyses, the Board of Education has deemed to find them inadequate. Clearly then, if the AIR analyses are inadequate, their defects should be remedied or those analyses should be redone in a proper fashion. And just as clearly, the supposed inadequacies in the AIR analyses are not a proper basis to replace the permanent Plan for plenary examinations which is now part of the Consent Judgment.

II. The City's Current Fiscal Situation

33. The second purported justification for the Board of Education's motion to modify the Judgment is that "the City's present fiscal crisis has required the Board of Education to cut back on expenses" (Christen Affidavit, Para. 11(b)) and that, in the Board of Education's view, money to be spent on the implementation of the Plan for plenary examinations would better be spent in other ways. No one can question that New York City is currently under going a fiscal crisis which has had an impact upon the budget of the Board of Education. However, as is shown below, that fact cannot justify granting the instant motion.

34. First, since underlying the permanent Plan are requirements of New York's Constitution and Education Law, the Board of Education is in reality seeking to justify destruction of the "merit" system mandated by New York law. That merit system has been part of New York law for many years, even during the Great Depression. Clearly, a temporary period of fiscal stringency is not a sufficient cause to destroy that system. And, it is respectfully submitted that whether it is or is not should not be for this Court to determine.

35. Second, it is clear that the City's fiscal situation was already a matter of public knowledge in late 1974 and early 1975 when the permanent Plan was submitted to this Court, approved by it and made a part of the Judgment. This being so, the fiscal crisis cannot be deemed an unforeseen change in circumstances so as to justify modification of the Consent Judgement.

36. Annexed hereto collectively as Exhibit 3, are a number of newspaper articles which demonstrate what was public knowledge about the City's fiscal crisis from March 1974 through March 1975. These articles show the following:

a. In March, 1974, Mayor Beame indicated that the City was faced with "an insuperable" budget deficit of $1.499 billion and would require assistance from Albany and Washington to make up the difference. N.Y. Times, March 23, 1974, p. 34, col. 2.

b. In October, 1974, Mayor Beame indicated that New York City was in a budget crisis and that the "budget gap" for the 1975-1976 fiscal year was "in the hundreds of millions of dollars." N.Y. Times, October 18, 1974, p. 30, col. 1.

c. An October, 1974 survey of various fiscal authorities in and out of government conducted by The New York Times indicated that the government of New York City was in deeper economic trouble than at any time since the Great Depression of the 1930's. N.Y. Times, October 27, 1974, p. 1, col. 1.

d. In a November, 1974 editorial, The New York Times stated that the "clear implication of the latest figures on New York City's economy is that this city is sliding into bankruptcy with dismaying speed." N.Y. Times, November 4, 1974, p. 36, col. 2.

e. On November 9, 1974, Mayor Beame ordered a $330 million cut in pay and services in response to what he called "an emergency" and "a totally unheard of situation." N.Y. Times, November 9, 1974, p. 1, col. 2.

f. Later in November, 1974, Mayor Beame, in proclaiming "the toughest austerity program since the Depression," announced that 1510 city employees would be dismissed as Phase One of the City's cut-backs, that a vacancy freeze would be imposed on every city agency, and that the city might have to fire as many as 33,000 employees before the end of the fiscal year on June 30, 1975 to close a $330 million budget deficit. Daily News, November 20, 1974, p. 3; N.Y. Times, November 23, 1974, p. 1, col. 8.

g. In late November, 1974, James F. Regan, President of the Board of Education, said in response to a request from Mayor Beame to make savings that the central Board of Education was willing to trim $45 million

from its $1 billion operating budget* to help out in the fiscal crisis. N.Y. Times, November 28, 1974, p. 1, col. 6.

h. In December, 1974, the Board of Education responded to "the grim fiscal reality of the city" by reducing its proposed capital budget 70% from $450 million to $130 million and eliminating 11 building projects and postponing 13 others. N.Y. Times, December 13, 1974, p. 52, col. 1.

i. Also in December, 1974, Mayor Beame announced Phase Two of the City's austerity program, calling for the dismissal of 3,725 city employees, including 1100 teachers and other school employees and substitute teachers equivalent to 875 full-time teachers. N.Y. Times, December 12, 1974, p. 1, col. 8.

j. In mid-January, 1975, Phase Three of the City's austerity plan was announced: it called for the forced retirement of some City employees and the dismissal of 4,050 policemen, firemen, teachers and other City workers. Daily News, January 16, 1975, p. 2; N.Y. Times, January 17, 1975, p. 37, col. 1.

k. In February, 1975, Mayor Beame announced a $1.68 billion budget gap for the City's 1975-1976 budget, and The New York Times said in a lead editorial that New York City faced "a fiscal crisis from which there can be no escape without drastic cuts in personnel and services and substantial increases in taxes." Daily News, February 16, 1975, p. 3; N.Y. Times, February 18, 1975, p. 28 col. 1.

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*As indicated below, the total budget of the central Board of Education and of the 32 community school boards for 1975-1976 was about $2.25 billion. However, the central Board's share was about $1 billion.

37. Third, not only was this fiscal situation foreseeable in 1974 and 1975 but it has not caused the kind of "grievous wrong" which, as indicated in the Board of Examiners' accompanying memorandum of law in opposition to this motion, is necessary to modify the Consent Judgment herein. In fact, the Board of Education does not claim that compliance with the Judgment is now causing any hardship. For even assuming arguendo that the prototype job analyses must be completely done over, at most another $36,000 must be expended. In view of the total education budget for the New York City Schools of $2.25 billion, the expenditure of that sum would not cause any hardship. And the Board of Education is already obligated by contract with Development Dimensions Inc., to pay that firm to create and validate the three prototype examinations.*

38. Fourth, the Board of Education has not even shown that compliance with the Judgment might cause oppressive hardship in the future. It cannot be deemed oppressive hardship to fund the "merit and fitness" system for the selection and licensing of supervisors which is mandated by New York law. Moreover, contrary to the statement made in the Christen Affidavit, para. 31, it is quite clear that the cost of administering the prototype examinations will be substantially less than the $150 per applicant forecast by the Board of Education's unidentified "experts". The Board of Examiners informed the Board of

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*The Board of Education entered into a contract with Development Dimensions in June 1975 pursuant to a resolution adopted by that Board at a meeting on January 27, 1975. A copy of that resolution is annexed hereto as Exhibit 4.

Education months ago that the cost of administering the prototype examinations will be very substantially less than the pre-1970 cost per applicant. This results in large part from the flexible assessment center technique which is to be used as part one under the permanent Plan.

39. Further, once the permanent Plan is really under way, both the job analyses and the examinations will be prepared by in-house personnel of the Board of Education and Board of Examiners respectively.* This will no doubt be less costly than the use of outside consultants.

40. In addition, the impact of the City's fiscal crisis on the Board of Education's budget should be substantially essened by the so-called Stavisky Law which was recently passed by the New York legislature over the Governor's veto and went into effect immediately. That law (a copy of which is annexed hereto as Exhibit 5) places a floor under the minimum City appropriation for education in this fiscal year and in future fiscal years.

41. Although efforts are apparently being made to compromise, it has been estimated that the effect of this Law as it presently stands is to mandate the restoration of something between $140 to $180 million to the Board of Education's current budget and to require greater budget stability for the New York City schools in the future.

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*The Board of Examiners' motion to implement the Consent Judgment seeks to authorize and direct the Examiners to prepare prototype job analyses using its consultants. That motion does not seek authority for the Examiners to prepare all job analyses.

42. Fifth, the Board of Examiners has repeatedly indicated its willingness to work together with the Board of Education in order to implement the permanent Plan in a manner which will minimize costs. Months ago the Chancellor was also informed of the Examiners' suggestions of ways to minimize costs. Thus, e.g., the Board of Examiners suggested raising the application fee from the current $20 per applicant; and suggested possible adjustment of rates of pay for examination assistants.

43. More recently, the Board of Examiners met with the Board of Education in a cooperative effort to resolve the matters presently before this Court. Following that meeting, the Board of Examiners suggested that the way to retain the Plan and the "merit" system required by state law while at the same time minimizing costs is to complete the prototype job analyses, prepare the prototype examinations and then defer actual administration of those prototype examinations until supervisors are needed in those positions. The Board of Examiners' suggestion was made in the form of a letter dated March 18, 1976 from Saul Z. Cohen, its counsel in this case, to Deborah Rothman, counsel for the Board of Education (a copy of which is annexed hereto as Exhibit 6).

44. Thus, it appears to the Board of Examiners that the Board of Education is using the existence of the City's current financial situation as a justification to subvert the "merit and fitness" system. After all, the Examiners' suggestions show that it has not insisted that examinations be conducted unless they are actually needed for a particular position and that it otherwise intends to

implement the permanent Plan in a realistic fashion. Further, since the Board of Education is already obligated to pay for the prototype analyses and examinations, implementation of the Plan at this time will not cause any significant additional expenditure by the Board of Education.

III. The Present Personnel Requirements in the City's Schools

45. The Board of Education's third purported justification for its motion is that "there are few vacancies in any supervisory positions at the present time, making the development of an elaborate job analysis and Phase 1 examination scheme for each supervisory title . . . particularly wasteful." (Christen Affidavit, para. 11(c).) This justification is also baseless.

46. First, nothing in the permanent Plan requires the preparation at this time of job analyses for each supervisory position or of step 1 examinations for each position. What the Plan does require is the preparation of three prototype job analyses and step 1 examinations. But, as already indicated, those prototypes are to be prepared by independent consultants and the Board of Education is already obligated to pay for their services.

47. Second, even in the future, the Plan does not contemplate separate analyses and separate step 1 examinations for each of 44 supervisory positions. On the contrary, the Plan provides for unification of supervisory titles and for common tests for more than one position. (Plan, pp. 5-6; see Exhibit B to the Board of Examiners' motion to implement).

48. Third, while it is not clear whether the Board of Education's motion concedes that there are some supervisory vacancies at present (compare Christen Affidavit, paras. 11(c) and 36), it seems apparent that there are vacancies in certain positions, such as principalships at all levels of the New York City school system. Significantly, the position of principal of elementary schools is one of the prototypical positions under the permanent Plan for which prototype analyses and examinations must be prepared.

49. In fact, it would appear that the Board of Education has been using a device -- the temporary appointment of so-called "interim actings" -- to avoid the need to fill vacancies in the manner provided by law. For example, annexed hereto as Exhibit 7 is a copy of "Personnel Memorandum No. 95" dated January 29, 1976 from Frank C. Arricale, the Executive Director of the Board of Education's Division of Personnel, instructing all appointing authorities to use "interim actings" for principalship vacancies.

50. Moreover, the Board of Examiners continues to receive requests from "acting" supervisors to be evaluated under the "interim" on-the-job evaluation system.* It should not be surprising that there are vacancies since there are approximately 4000 supervisors in the New York City school system and many are either eligible for retirement or nearing eligibility. Concern about their pensions among those who are eligible to retire has led some to

*To date, about 1100 supervisors, many of them members of plaintiffs' class, have received licenses under the so-called "interim" on-the-job evaluation system authorized as the first part of the settlement of this action.

retire and may well lead to an increase in retirements.

51. Fourth, whether or not there are vacancies at present, it is clear that at some point in the future there will be. Thus, the current personnel needs of the City's schools cannot justify modifying the Consent Judgment and thus destroying the "merit" system. That system is intended to govern the selection and licensing of supervisors at all times and whenever vacancies occur.

52. Fifth, the Board of Examiners understands that, during the Great Depression and again on more than one occasion in the last few years, there have been excess numbers of teachers or supervisors without positions. In addition, as shown above, the City's present financial plight was public knowledge in 1974 and early 1975. Thus, for these reasons, the fact that there are fewer or no supervisory vacancies in the City's schools at present cannot be deemed unforeseen.

IV. The On-The-Job Evaluations

53. The Board of Education's last purported justification for its motion is that "the appointing authorities rather than examination assistants should conduct on-the-job evaluations". Of course, this is less a justification than the Board of Education's conclusion as to the procedure it would now like to adopt. In any event, this "justification" is equally without basis.

54. First, as shown above in this affidavit, the change in the structure of the on-the-job evaluation portion of the permanent Plan would violate the requirements of New York's Constitution and Education Law by

removing the Examiners from the determination of the applicant's fitness and by raising the possibility that non-objective factors will enter into that determination.

55. Second, under section 2573(1)(b) of the Education Law, the appointing authorities (i.e., the Central Board of Education or community school boards) have an opportunity to evaluate the performance of supervisors during the "probationary period of three years" that each supervisor must serve after appointment. Thus, the opinions of those "who come into daily contact with the supervisors" (Christen Affidavit, para. 40) are taken into account in determinations whether the supervisor will receive tenure. But the Education Law also provides that no person is eligible to be appointed to such a supervisory position without receiving a license as a result of passing a Board of Examiners' test. And that test must be "objective". (See Rockowitz Affidavit, paras. 5-7).

56. Third, since the "interim" on-the-job evaluation system was in effect during 1974 and early 1975 prior to the entry of this Court's order incorporating the permanent Plan as part of the Consent Judgment, the Board of Education's current preferences cannot be said to be "unforeseen". Nor can the present evaluations be said to give rise to "grievous harm".

57. Fourth, it is doubtful that a shift of on-the-job evaluations to the appointing authorities would save money since someone must administer those evaluations.

58. Fifth, all this being so, the Board of Examiners nevertheless suggested to the Board of Education in March 1976 (see Exhibit 6 hereto) that it would be

willing to discuss "the elimination or substantial modification of the present Step 2 performance evaluations" so long as "a permanent license would be issued after the successful completion of the Step 1 examination." In other words, if the Board of Education does not deem it desirable for the Board of Examiners to conduct performance evaluations in the field, the Examiners are willing to discuss such a change. However, the Examiners must retain the final decision on the candidate's fitness for licensure.

Conclusion

59. It should be readily apparent from the foregoing that the Board of Education's motion to modify the Consent Judgment should be denied. The Board of Education's motion is an attempt to vitiate New York's Constitutional and statutory "merit and fitness" system. Its proposal, if adopted, would accomplish that goal. Its purported justifications for its motion are transparent and baseless.

Ethel Fitzgerald

Sworn to before me this
5th day of May, 1976

Notary Public

HOWARD A. JACOBSEN
Notary Public, State of New York
No. 24-1945[illegible]
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

BOSTON M. CHANCE, et al.,

Plaintiffs,

-against-

THE BOARD OF EXAMINERS AND THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

- x

AFFIDAVIT

70 Civ. 4141 (M.P.)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SAUL Z. COHEN, being duly sworn, deposes and says:

1. I am a member of the firm of Kaye, Scholer, Fierman, Hays & Handler, counsel for the Board of Examiners herein. I have been in overall charge in the legal representation of the Board of Examiners in this action since its commencement in 1970 and am fully familiar with the matters set forth herein.

2. As is shown below, the Board of Education's initial response to this case in 1970 was to take a neutral position and to leave its defense to the Board of Examiners. Since then, the Board of Education has adopted a number of varying postures. It is ludicrous to characterize it as "the primary defendant". (Christen Affidavit, para. 53.) As is also shown below, the Board of Education's present proposal is nearly identical to settlement proposals made by plaintiffs in 1972-1973 and rejected by the Board of Examiners at that time.

The Board of Education's Varying Postures in this Case.

3. This action began in the latter part of 1970 and, shortly thereafter, plaintiffs moved for a preliminary injunction to halt a particular supervisory examination which was then scheduled. The Board of Education's response to that motion was to take the position that since supervisory examinations were "the sole statutory responsibility" of the Board of Examiners, it rather than the Board of Education should defend the examination procedures in this case. Thus, the Board of Education submitted the affidavit of its President, Murry Bergtraum, sworn to October 26, 1970 (a copy of which is annexed hereto as Exhibit 8) which stated:

> "The Board's position is that the sole statutory responsibility for the administration of tests for supervisory personnel lies with the Board of Examiners.
>
> * * *
>
> Since Education Law § 2569 devolves the duty upon the Board of Examiners to administer all license examinations it is the position of the Board of Education that the Board of Examiners should satisfy the burden of defending their examination procedures." (Paras. 13 and 15)

Thereafter, during the course of proceedings relating to plaintiffs' motion for a preliminary injunction both in this Court and in the Second Circuit, the Board of Education took a neutral stance and never even submitted a memorandum of law.

4. As is more fully shown in paragraph 8 of the Rockowitz Affidavit submitted in support of the Board of Examiners' motion to implement the Consent Judgment (the "Rockowitz Affidavit"), following the Second Circuit's affirmance of the preliminary injunction, the Board of

Examiners moved, by notice of motion dated June 1, 1972, to modify that injunction to permit new plenary supervisory examinations pursuant to a new system which was submitted with that motion. In response to that motion, the Board of Education adhered to its previously announced neutral position. Thus, on June 27, 1972, the return date of the motion, the following colloquy took place between Judge Mansfield, Jeffrey Mintz, one of plaintiffs' attorneys, and Francis Milberg, an Assistant Corporation Counsel representing the Board of Education:

> "THE COURT: . . . I had never thought that the Board of Education was taking the position that they were going to participate in the formulation of examination procedures for supervisory positions.
>
> I thought they felt that was the problem of the Board of Examiners and that they would take a sort of neutral attitude. They certainly did that during the hearings . . . [on the preliminary injunction].
>
> * * *
>
> MR. MINTZ: . . . Counsel for the Board of Education and the Chancellor is here. Perhaps she would like to speak on that question.
>
> MISS MILBERG: Your Honor, I have been instructed that we are going to take a neutral position on the development of these examinations." (Transcript, pp. 15-16)

5. At the suggestion of Judge Mansfield, the parties commenced negotiations following that hearing to see whether they could reach agreement upon a Plan for new plenary supervisory examinations. As a result of those negotiations, plaintiffs and defendants Board of Examiners and the Chancellor of the City School District reached agreement upon the two part settlement of this case which is more fully described in paragraphs 10-18 of the Rockowitz Affidavit.

6. Although the Board of Education had previously taken a neutral stance in the action, it refused to execute the Stipulation of Settlement and argued that the "interim" on-the-job evaluation system would violate New York State's Constitution and Education Law.* When Assistant Corporation Counsel Leonard Bernikow expressed the Board of Education's position during a conference in chambers on May 3, 1973, Judge Mansfield stated that the Board of Education had previously left the active role in this case to plaintiffs and to the Board of Examiners; that the Board of Education had been a "Rip Van Winkle"; that he did not think that it would be proper for the Board of Education to now become an "awakened giant" which would destroy the settlement of the case; and that if the Board of Education would not go along with the settlement, he would consider modifying the preliminary injunction then in effect in order to permit the first part of the settlement (the "interim" system of on-the-job evaluations) to be implemented.

7. Thereafter, on May 21, 1973, Judge Mansfield rendered a decision denying plaintiffs' motion for a default judgment against the Board of Education on the ground that it had not answered the complaint, but holding that the then existing preliminary injunction against the Board of Education would be modified so that its terms would parallel those of the Consent Judgment to be entered pursuant to the Stipulation of Settlement between plaintiffs, the Board of

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* See the Rockowitz Affidavit, paras. 12 and 29 n, and point IV of the Board of Examiners' accompanying memorandum of law in opposition to this motion.

Examiners and the Chancellor. In that way, the "interim" on-the-job evaluation system could be implemented. In the course of that decision, Judge Mansfield noted that the Board of Education had "adopted a relatively passive role throughout this litigation" and that:

> "Because of the numerous problems faced in developing an acceptable plan, the parties were required to meet almost weekly throughout the fall of 1972 and the winter of 1972-73. The active work was carried out by representatives of plaintiffs and of the Board of Examiners. Although the Board of Education was invited to attend, it took a neutral stance, as it had from the outset of the litigation. The efforts to resolve the issues were accordingly carried out by counsel for plaintiffs and the Board of Examiners, with the latter establishing a Task Force which considered the issues, developed models of a new examination system, and met with various interested groups." (Unreported decision dated and filed May 21, 1973)

8. Thereafter, following a number of hearings, a Consent Judgment was entered herein on July 12, 1973 and a parallel order was entered against the Board of Education. The latter then continued its opposition to the "interim" on-the-job performance evaluation system by appealing to the Second Circuit. However, at the same time that the Board of Education was challenging the interim system in the Court of Appeals, negotiations continued between the parties to arrive at agreement as to the permanent Plan for a comprehensive system of plenary supervisory examinations which the parties had agreed would be substituted for the "interim" system as soon as possible. During this time the Board of Education's counsel, Mr. Bernikow, attended settlement meetings and, after the Court of Appeals rendered its decision on April 12, 1974 affirming the settlement orders, the Board of Education's participation in settlement

discussions intensified. Both counsel for the Board of Education and representatives of that Board and of the Chancellor actively participated in negotiations about the Plan.* In fact, on more than one occasion the other parties met directly with the Board of Education itself in an attempt to resolve some of their remaining differences with regard to that Plan.

9. Because of the Board of Education's desires about certain points, a number of relatively last minute changes were made in the Plan. Thus, e.g., the Board of Examiners had originally provided in its Proposal for Modification of Supervisory Examination Procedures submitted with its notice of motion dated June 1, 1972 for modification of the preliminary injunction that "the Board of Examiners will develop job analyses for each position for which it is required to conduct examinations". (A copy of these motion papers and of the proposal are annexed hereto as Exhibit 9.) During negotiations with plaintiffs' representatives it was agreed that consultants would prepare prototype job analyses for the Examiners, but this basic notion that the Board of Examiners would be responsible for job analyses was retained. However, during a meeting between plaintiffs, the Board of Examiners and the Board of Education's representatives in Mr. Harold

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* Mr. Bernikow of the Corporation Counsel's office, as well as Mr. Harold Siegel, the Board of Education's secretary, Mr. Joseph Monserrat, a member of the Board, Mr. Michael Rosen, counsel to the Chancellor, Mr. Robert Garcia, an assistant to Mr. Monserrat, and Mr. Frank C. Arricale, Director of the Board's Division of Personnel attended various meetings between the parties during April and May 1974. On May 24, 1974, the Plan for plenary examinations was submitted to Judge Tyler as having been jointly developed and agreed

Siegel's office in 1974, Mr. Siegel suggested that, since the Chancellor normally determines supervisory job titles and duties, the Board of Education should be responsible for the job analyses under the Plan for plenary examinations. Although the usual practice is for a testing agency to prepare a job analysis as part of the preparation of the examination, the Board of Examiners agreed to Mr. Siegel's suggestion in the interest of reaching an agreement with all parties on the Plan. Plaintiffs also agreed to Mr. Siegel's suggestion since it was also agreed that a consultant would develop the prototype job analyses for the Board of Education.*

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10. Finally, agreement was reached between all parties on the Plan for plenary examinations with the exception of two issues (the choice of consultants and reporting requirements) and that Plan was then submitted to this Court on May 24, 1974. As to the two issues, the parties agreed to submit them to this Court for resolution in the event that further negotiations between them did not lead to agreement.

* Thus, although this point is perhaps more relevant to the Board of Examiners' motion to implement the Consent Judgment, plaintiffs' memorandum dated April 26, 1976, pages 2-3 n. is incorrect in claiming that they insisted that the Board of Education prepare job analyses as a "protection". Rather they insisted that prototypes be done by independent consultants. It was the Board of Education rather than plaintiffs that suggested that the Board of Education be responsible for job analyses. The footnote in plaintiffs' memorandum is also incorrect, of course, in claiming that the Board of Examiners "lost" this case. As plaintiffs' counsel are well aware, nobody won and nobody lost since this case was settled. Thus, as Jeanne R. Silver, Esq. said at the hearing on the settlement on June 28, 1973: ". . . this is a settlement agreement and in the course of this settlement agreement the parties on both sides are giving up rights." (See Appendix to Brief of Appellant Board of Education on Appeal No. 73-2320, p. 224a.)

11. One of the two issues on which the parties could not reach agreement was the identities of the independent consultants to be chosen by the Board of Education and the Board of Examiners, respectively, to carry out certain functions under the Plan. (See Rockowitz Affidavit, para. 14.) The Board of Education had insisted that the designation of an independent consultant had to remain the unilateral responsibility of each of the government agencies involved. During the negotiations, Mr. Monserrat, a member of the Board of Education, specifically said that the Board could not and would not delegate this responsibility. (See copies of the affidavits of Leonard Bernikow and Harold Siegel, both sworn to January 14, 1975, which are annexed as part of Exhibit 1 hereto.) For that reason, when the Plan was submitted to the Court, it was agreed that the issue of the selection of consultants would be left for judicial resolution.

12. Thereafter, this Court approved the Plan on January 14, 1975. Then, before this Court finally resolved the consultant issue and the other issue on which the parties could not reach agreement (see Rockowitz Affidavit, paras. 15-18), the Board of Education's counsel, Leonard Bernikow, communicated to Judge Tyler by letter dated March 10, 1975 that ". . . the Board of Education would consent to the entry of the consent judgment previously entered against the Board of Examiners on July 12, 1973". (A copy of that letter is annexed hereto as Exhibit 10.) In light of that letter, the March 25, 1975 order which made the permanent Plan for plenary examinations a part of the 1973 Consent Judgment also made the Board of Education

1973 Consent Judgment in all respects. (See the Rockowitz Affidavit, para. 17 n.)

13. In short, the Board of Education initially took a passive role and left the defense of this action to the Board of Examiners, the statutory testing agency. It then awoke from its sleep to attempt to destroy the settlement negotiated by the other parties. After this tactic was rejected, the Board of Education rejoined the negotiations with regard to the permanent Plan for plenary examinations, obtained concessions from the Board of Examiners and then reached agreement with the other parties on the Plan. Now, after having agreed to the Plan and having also consented to the entry of the 1973 Consent Judgment against it, the Board of Education again seeks to destroy a settlement reached between all parties.

The Board of Education's Present Proposal Was Rejected During Settlement Discussions in 1972-1973.

14. During settlement discussions between plaintiffs and the Board of Examiners in late 1972, plaintiffs proposed the elimination of a failure cut-off point in the objective qualifying examinations for supervisors required by New York law. The Board of Examiners rejected this proposal because, inter alia, it was inconsistent with New York's Constitution and Education Law.

15. Thereafter, in early 1973, plaintiffs submitted a settlement proposal for discussion which had been developed by Professor Paul Tractenberg (the "Tractenberg

Proposal"). It advocated a two-step examination procedure nearly identical to that now submitted by the Board of Education on this motion: First, an "unassembled examination" would be given to determine whether the training and experience requirements promulgated by the Chancellor had been satisfied. Those satisfying those requirements would receive a conditional license. Second, permanent licenses would be given to those supervisors whose performance on-the-job after one year were found to be satisfactory. Under the Tractenberg Proposal, the evaluations would be conducted by the Board of Examiners, but the final licensing decision would be made by community school boards. The Tractenberg Proposal was also rejected by the Board of Examiners because, inter alia, it would violate New York law. Thus, the Board of Education's present proposal is a rehash of settlement proposals made by plaintiffs in 1972 and 1973 and rejected by the Board of Examiners at that time. In fact, the Board of Education's present proposal is even worse than the Tractenberg Proposal because the latter would have retained a greater role for the Board of Examiners.

Saul R. Cohen

Saul R. Cohen

Sworn to before me this
5th day of May, 1976.

Notary Public

MICHELE KOUGIAN
NOTARY PUBLIC, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires [illegible], 1977

LEGAL FILE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

BOSTON M. CHANCE, et al., :

Plaintiffs, :

- against - :

THE BOARD OF EXAMINERS AND THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al., :

Defendants. :

----------x

70 Civ. 4141
(M.P.)

EXHIBITS TO THE BOARD OF EXAMINERS' AFFIDAVITS IN OPPOSITION TO THE MOTION TO MODIFY THE CONSENT JUDGMENT

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER
Attorneys for Defendant Board of Examiners

425 Park Avenue
New York, New York 10022
759-8400

Exhibit 1 - Affidavits of Leonard Bernikow (plus exhibit) and Harold Siegal, sworn to January 14, 1975

(Printed at pp. 405a-459a)

Exhibit 2

SEYMOUR BERNSTEIN ASSOCIATES

Personnel Consultants

214 CUBA HILL ROAD
HUNTINGTON, N.Y. 1174
(516) 767-3768

712a

August 18, 1975

Mr. Harold Seigel, Secretary
Board of Education
110 Livingston Street
Brooklyn, New York 11201

Dear Mr. Seigel:

This is to acknowledge receipt of Figures 12, 13 and 14 in connection with the prototype analyses. After reviewing these materials my criticism on page 2 regarding the analyses and interpretation made by the consultants is withdrawn as this material is sufficiently covered in Figures 12, 13 and 14. Should you desire any further information please do not hesitate to contact me.

Sincerely,

Seymour Bernstein

SB:rd

C O P Y

Please note this is a copy, original lost in the mail.

REVIEW OF PROTOTYPE JOB ANALYSES OF THREE SUPERVISORY POSITIONS WITHIN THE NEW YORK CITY SCHOOL SYSTEM PREPARED BY AMERICAN INSTITUTES FOR RESEARCH - JUNE, 1975

The requested review was to consider but not be limited to the following areas:

Procedures employed
Analyses and interpretation made by the consultants
Conclusions reached

I. Procedures

AIR appears to have gone to great effort to document the procedures utilized in every phase of the study. In fact, the vast majority of their report deals with these procedures. Comparison of AIR procedures to the recommended procedures in the area of job analyses indicates that satisfactory procedures were employed in all steps of the study, including collection of background material, selecting a sample and actual methodology. Likewise, the consultants determination to utilize a multi-method job analysis procedure consisting of critical incident technique, the job task inventory questionnaire and on-site observations appears to be very comprehensive and appropriate for this study.

II. General Comments

On page 40, paragraph 2 - while I agree with AIR that such skills as "empathy, patience, tact, leadership, etc." do not lend themselves to reliable observation, I do hope that both the job analyses consultant and the test development consultants will indicate if they find these factors to be critical to job success as major skills, knowledges or abilities and that the test development people will likewise find some way of assessing these traits.

Irwin Bernstein

On page 43, paragraph 3, I would assume that the October 31, 1973 census was the last available census but I am somewhat troubled by the use of a document which may be seriously deficient. The Board of Education officials would be in a better position to determine if the ethnic composition has changed significantly since that date.

In general, the consultants' procedures were found to be extremely comprehensive and in keeping with acceptable standards.

III. Analyses and interpretation made by consultants

In general, AIR has gone to great lengths to try to have as representative a sampling as is possible in a very complex system with many variables. I think their work in this area is commendable.

It is difficult to distinguish between the section dealing with analysis and the one on results but this reviewer does not find data analyzing the task statements into meaningful knowledges, skills and abilities which can be used in turn by the test developer. It may be that this material is contained in figures 12, 13 and 14 which were not included in the report and Appendix E which likewise was not included, and if such material is contained in these missing sections the criticism in this instance is withdrawn. It is imperative that a linking mechanism between the task statements and the required SKA's be firmly developed by both the job analyses consultants and the test development consultants. This is the area where professional judgment plays a critical role and I could find very little discussion regarding analysis on how the SKA's were derived other than in the same manner as the task statements.

In the section dealing with percentage of incumbents performing tasks, percentage of time spent on tasks, and the average importance for tasks, it seems that the consultants have acted as recorders rather than analyze the data. I do not feel that job analyses can be reduced to arithmetical precision and would have liked to have seen more discussion and analysis in this area. If this implied criticism is beyond the scope of the AIR contract and part of the Development Dimensions, Inc. contract, this criticism is withdrawn.

The approach on minimal standards on pages 68, 69 and 122 is excellent. I think this type of approach will lend assistance to the test developers and also in trying to develop a licensing procedure which will discriminate between marginal and superior performances.

IV. Recommendations for future analyses and job analyst training

AIR's recommendations for future job analyses is good. It should, however, be kept in mind that the methodology employed on the prototype study may not be necessary in such great detail on future studies. There are alternative ways of getting at the same information and the Board of Education should keep its options open, if possible, until they have completed a full cycle of job analyses, test development, validation and evaluation of the results.

V. Conclusions

The conclusion section starts with what appears to be an attempt to justify AIR's procedures for the study. I feel their procedures were good enough and do not need such justification which adds very little to the report. I do, however, find objection on pages 126 and 127. Even though the statements are

very general, since AIR is, by their own admission, not responsible for the test development, they should refrain from making any recommendations concerning examination procedures.

Lastly, in reviewing the AIR study we must return to page one of the report where the stated objectives of the study were

> "(1) to develop the actual data that would allow for the development and validation of new licensing procedures for the selected positions, and (2) to provide the school system with procedural guidance for conducting similar job analyses for other supervisory positions in the future".

In relation to objective #1, as already has been discussed, it is impossible based on the data available to determine if this has been achieved. Problems exist if the test development consultants do not have the required skills, knowledges and abilities for each position in a useful and meaningful form. While task statements have been developed with great care, it is not clear as to responsibility for translation of these task statements into SKA's. Also, it might be recommended that a continued relationship exist between the consultants (AIR and Development Dimensions, Inc.) if necessary and not already provided for, to assist and clarify any misunderstanding of the data.

Whether objective #2 has been achieved is similarly difficult to determine. If the Board of Education expected to be able to independently conduct similar studies it is doubtful that this has been accomplished unless there was much more involvement of Board of Education staff then is indicated in the report. AIR's procedures, however, can be used by trained staff as a ptototype model for other job analyses.

BOARD OF EDUCATION
CITY OF NEW YORK
COMMUNITY SCHOOL BOARD
DISTRICT 14
310 SOUTH 1st STREET
BROOKLYN, N. Y. 11211

387-2015
387-9034

717a

August 28, 1975

Mr. Harold Siegel, Secretary
Board of Education
110 Livingston St.
Brooklyn, N.Y. 11201

Dear Mr. Siegel:

I have reviewed the Job Analyses of Three Supervisory Positions developed by A.I.R. In general, I am satisfied that a very thorough analysis has been done. A.I.R. used a good cross-section of the school districts in New York City. Every possible type of district was represented in the survey.

The analyses was developed in consultation with CSA and the Bureau of Personnel, as well as Community School Boards and Superintendents. The choice of knowledge and skill requirements and the duty areas were very good. They covered all possible areas which should be tested when selecting a supervisor. I was impressed by the fact that A.I.R. changed its methods if the collected data was inadequate.

I generally concur with the conclusions and recommendations of A.I.R. The important duty areas, the knowledge and skill requirements and other recommended items should be included in any licensing procedure for supervisors. Of course, variations will have to be made according to the title of the position.

I agree that Assistant Principal for elementary, intermediate and junior high schools should be under one license. Principal and Assistant Principal could also be one license, with a tenure period required of an Assistant Principal before appointment as Principal.

I would question the recommendation that there should be a single license for all Assistant Principals, including high school. I would think that there could be one license for Junior High and High School, since these supervisors have basically the same duty areas.

.more.

BRO. ROBERT F. LALLY

BOARD OF EDUCATION
CITY OF NEW YORK
COMMUNITY SCHOOL BOARD
DISTRICT 14
310 SOUTH 1ST STREET
BROOKLYN, N. Y. 11211

387-2319
387-8094

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Finally, A.I.R. questions the value of including districts and Community School Boards in future job analyses. While I agree that the responses which were received from the selected boards were inconclusive, I think it would be a grave error not to consult with the Community School Boards and Superintendents in the development of any proceudres or job analyses. I do not believe that a general conclusion can be drawn from this one experience. To quote from A.I.R., "they are necessary to obtain cooperation for the analysis activities or acceptance of the results of the analysis." The Community School Boards are responsible for the selection of school supervisors and therefore should be involved in the development of job analyses.

I was pleased to review this report. If I can be of help in the future, please let me know.

Sincerely,

Brother Robert F. Lally
President
C.S.B.#14

BRFL:rj

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RECEIVED
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SECRETARY
BOARD OF EDUCATION

August 19, 19

Mr. D. E. Robinson Jr, President
Board of Education of the City of New York
110 Livingston St
Brooklyn, N.Y. 11201

Dear Mr Robinson.

In compliance with your request in your letter of July 18, I submit herewith my reactions to the findings of the A.S.R concerning job-related supervisory examinations, viewed from the point of view of an incumbent elementary school principal.

A.S.R is commended for its sincere attempt and exhaustive approach which stems for objectivity. Many of the data set forth, such as skills needed for successful supervision, career comprehensive and useful judgments of minimally acceptable standards and the job summary checklist are good. A cautionary point for the Board of Education and the Board of Examiners to speculate upon may be examinations based solely on the job-related mandates enumerated in the resulting judgment

(page 1)

provided clearly by the judges in the Chance-Brenda case. However, I believe that the Board of Examiners could have come up with even more pertinent data if it had undertaken the study. Its expertise and expertise would have provided the Chancellor and the Board of Education with data that could be used more effectively than those provided by A.I.R.

Community school district visits are inconclusive of little value for the purposes of this study. Widely disparate views exist forth and many fence-sitting positions were discerned.

I take strong exception to the recommendation that a single exam be developed for principal and assistant principal since the duties are simply not interchangeable. There is a significant though intangible difference between the requirements, leadership, and interpersonal relationships

(more)

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knowledge of the curriculum, teacher training, experience and administrative ability, the principal, must all of these be a high degree for success on the job. Well qualified experienced APs should be given a close look for principals.

I further suggest that a common file elementary, jr high school and high school intermediate supervisors is redundant. The needs and objectives of each are vastly different. The duties of supervision in each of the three levels are clearly dissimilar. Consider the following: the assistant to a person with a five background in early childhood education and an assistant in a physical science classroom.

I hope that the appointment as a careful consideration. I am grateful for your consideration.

Sincerely yours,

[illegible]

[illegible] Custer ST
[illegible] Valley ST Tacoma
Wash 98465-4619
Page 3

BOARD OF EDUCATION OF THE CITY OF NEW YORK
OFFICE OF SCHOOL DISTRICT 11
71 METROPOLITAN OVAL
NEW YORK, N. Y. 10462
TALMADGE 8-4200

NICHOLAS CICCHETTI
COMMUNITY SUPERINTENDENT

IRWIN ALTMAN
DEPUTY SUPERINTENDENT
ANNA PETECHE
EXECUTIVE ASSISTANT

July 22, 1975

722a

RECEIVED
JUL 28 AM 9:44
BOARD OF EDUCATION
SECRETARY

Mr. Isaiah Robinson, Jr.
President
Board of Education
110 Livingston Street
Brooklyn, N .Y. 11201

Attention: Mr. Harold Siegel

Dear Mr. Robinson,

I have reviewed the Job Analyses prepared by the American Institute for Research for the three supervisory prototypical supervisory positions.

Reactions and comments contained herein and represent my views as a superintendent and not as president of the association. May I suggest that you ask a high school superintendent also to review the material inasmuch as one of the three positions is that of high school assistant principal (supervision).

The procedures employed for the development of the job analyses were thorough and related to tasks. The method was to then relate tasks to identifying characteristics. I don't question this approach as a starter to develop the model but I have reservations about the Board of Education carrying out future job analyses revisions, or using "in house" staff to develop them for all the other titles. It is a time consuming system and, if not properly funded and staffed will result in superficial, subjective job analyses and rating scales for other positions.

I think that A.R.S. made correct interpretations of the data they collected and did a good job in extrapolating the important criteria for rating. The system of designating the broad elements and duty areas was a fair conclusion. The identification of minimal acceptability job performances and expectations is a good base for not only examining candidates but rating them.

I have some problem with the degree of subjectivity that may have been a factor in deciding on these minimal performance criteria since they were elicited through questionnaires. Since such criteria could be used to pass or fail a candidate, it is crucial to the system being proposed, and should be examined intensively in interview situations before deciding.

Finally, I would agree with A.R.S. that their system of collecting data and conducting analyses, which then leads to establishing qualifications, could be used for other supervisory positions.

Sincerely,

Nicholas Cicchetti

NC:mc

NICHOLAS CICCHETTI
Community Superintendent

BOARD OF EDUCATION OF THE CITY OF NEW YORK
110 LIVINGSTON STREET, BROOKLYN, N. Y. 11201
HIGH SCHOOL DIVISION
TELEPHONE 596-5480-1

FILLMORE PELTZ
ACCESS PROGRAMS

724a

July 24, 1975

Mr. Isaiah E. Robinson, Jr., President
Board of Education
Room 1126

Dear Mr. Robinson:

The procedures employed by A.I.R. appear to be extremely comprehensive. The large number of potential respondents they contacted, and the variety of job titles and experience levels they represent, indicate that a broad base of inputs has been developed. I would question, however, the value of the abstract of "ineffective" incident reports. The responses do not appear to be critical enough to shed adequate light upon the tasks which incumbents customarily perform. Under examination conditions, no candidate would admit to being supportive of any of these actions, yet almost all candidates would be able to prepare a digest of ineffective supervisory techniques as a purely academic exercise. A more realistic approach, possibly, would have been to request reports of both effective and ineffective incidents, to be followed by the designation of each incident elicited as either an effective or an ineffective supervisory approach by a panel of experienced supervisors. This panel might also have been asked to suggest remediation for those incidents determined to be ineffective approaches.

The analyses and interpretations made by the A.I.R. are well-designed. They properly give credence to the "judged importance index of the duties and tasks." The general summary confirms what one may have suspected to be the pattern. The general expenditure of time for the positions under consideration is concisely described. Of course, specific individuals and schools, such as those which have an unusually strong community relationship, may differ from these norms. Regarding the specific incidents reported, I would take exception to the listing of the following as an ineffective supervisory technique: "Conduct a series of brief classroom observations to check on whether teachers are assigning and correcting homework as requested" (IA6-AP-S). Provided that there is a follow-up with respect to the development of simplified administrative procedures and suggestions for individualized applications of instruction, this can be an effective way of improving instruction.

Item IA ??-AP-S represents another incident report which should be listed as "effective," particularly in view of three issues: (1) the procedure listed is necessary, albeit unpleasant, if a performance-rating system is to have credibility; (2) this responsibility "goes with the territory" of an A.P., Supervision, although the words, "if improvement is not demonstrated," should be appended; and, (3) item II C2-AP-S adjudges a "laissez-faire approach with a teacher who is performing unsatisfactorily" to be similarly ineffective.

Items IC17-AP-S (effective), ID 14-AP-S and ID 27-AP-S represent, in my opinion, the most important tasks the supervisor performs from the standpoint of improving both instruction and supervisor - teacher relations. I would suggest that A.P.'s at all levels be expected to perform these tasks as part of their primary responsibilities.

One additional item that I would suggest is that the following task be included as part of the job description for the A.P. position: the ability to assist teachers in selecting assignments during otherwise unassigned administrative periods which would contribute to one's own professional growth and to the needs of the department's instructional program.

Finally, the overall conclusions reached by A.I.R. are thoughtful and generally in accord with my own subjective views. I agree that there should be "some minimum period of tenure as an assistant principal before being assigned as a principal," an "examination procedure prior to assignment to the particular position," and an "evaluation of on-the-job performance of the most important duties and tasks." I disagree, however, that there be "a single license for assistant principals at all levels including high schools." The degree of curriculum expertise needed for effective service as a curriculum specialist in the high schools appears to be very different from that required in the elementary and intermediate/junior high schools. I would be supportive, in fact, of the idea that <u>all</u> supervisors be required to demonstrate effective classroom instruction before being licensed. The conclusions presented do not appear to provide for this crucial element in supervisor-selection.

Sincerely yours,

Noel Kriftcher

NK:cp

Noel Kriftcher
Deputy Administrator
ACCESS Programs

Exhibit 3

727a
New York Times
Pg. 1[illegible], Col. 2
3/[illegible]/74

Mayor Tells News Executives City Faces 'Insuperable' Deficit

By MAURICE CARROLL

Mayor Beame detailed for news executives yesterday a looming budget deficit that he said "you need a magician" to solve.

The Mayor, using charts, gave the details of what he forecast as a 16 per cent increase in the cost of running the city and a 2.6 per cent increase in projected revenues.

It adds up, he said, to "an insuperable problem at this time."

In an informal lecture at Gracie Mansion after a buffet luncheon for executives in the news media here, the Mayor said it looked as if it would cost $12.9-billion in the fiscal year starting July 1 to continue running the city without any cuts in services.

The projected income from existing sources, he said, will rise to $11.4-billion, resulting in a $1.499-billion "gap" that must be filled to create the balanced budget required by law.

Appeals for Help

Mr. Beame appealed to his listeners to help tell the story to New Yorkers and to the Albany and Washington lawmakers who, he indicated, must be persuaded to help make up the difference.

"Slip in the idea I had nothing to do with it," he said with a wan smile, indicating that he had inherited much of the problem when he took office Jan. 1.

In making this presentation a feature of the annual budget process between City Hall and Albany, the Mayor said that only three methods were available—a cut in services, an increase in taxes or borrowing to defer "the day of reckoning."

Actually, Mr. Beame's forecast of revenues seemed unusually low. City expenses usually rise 15 per cent or so a year. Income from existing sources usually rises 5 per cent a year, but Mr. Beame defended his estimate of 2.6 per cent on the ground that revenues had risen at an unusual rate in the current year as a result of a number of once-only income producers.

He declined to specify what taxes he might seek, nor would he comment on a possible increase in the two big moneymakers — the sales and income taxes.

He did not hesitate to urge an increase in the commuter tax. That is an easy tax for Mayors to favor since it does not affect their constituents and is moreover most unlikely to be authorized by a commuter-oriented Legislature.

Commuters are now taxed at about one-tenth of what city residents pay.

Mr. Beame, who has started a quiet propaganda effort among city politicians and civic leaders, preparatory to the annual negotiations with Albany, spelled out the numerical components of the "gap" that he said the city faces. "I call it a 'chasm'" the Mayor said.

He said expenses had risen in the following areas.

Education, $171-million; social services, $236-million; debt service, $807-million; health and hospitals $106-million; police, $52-million; higher education, $81-million; charitable institutions, $79-million, and miscellaneous, $253-million.

Changes in Income

Projected income he said, has changed in these areas:

Real-estate taxes, up $7.3-million; general-fund revenues, down $4-million; state aid, up $4-million; federal aid, up $2.3-million; capital and special funds, up $11-million, and other items, up $6.8-million.

Mr. Beame showed how the "gap" could be trimmed to $655-million by a series of fiscal devices and by the imposition of previously authorized "nuisance" taxes. Most of those knowledgable about the municipal government consider these either technically or politically impractical—a "service tax" on haircuts, for instance, a $15 a year auto-use tax, quintupling the Staten Island ferry fare to 25 cents.

NEW YORK TIMES
10-18-74
Pg. 30, Col. 1

BEAME SAYS CITY HAS FISCAL CRISIS

Complains to Businessmen That Few People Believe It

By MAURICE CARROLL

New York City is in a budget crisis and too few people believe it, Mayor Beame complained yesterday.

"What I'm talking about is for real—it's not phony," he said at a luncheon of 200 business leaders.

The Beame administration has been protesting privately for some time that the predecessor administration of John V. Lindsay cried "wolf" with such annual predictability that it produced municipal boredom with the claim.

Now, the administration says, the Beame warnings are dismissed as just another scare tactic.

Yesterday the Mayor made that assertion publicly at a luncheon of the Chamber of Commerce and Industry in the Commodore Hotel.

The Mayor said the budget gap for the 1975-76 fiscal year was in the hundreds of millions of dollars. Besides the $190-million of added costs that he had said previously had been brought about by inflation and the national economic troubles, he said there was "an unforseen revenue shortfall of scores of millions of dollars."

Municipal Concerns Listed

The situation is so bad, he said, that he is abandoning his campaign promise to take current spending items out of the capital budget, which is supported mostly by borrowing.

He said the alternative was to use taxes to cover the items—"and my belief is, this is no time to think of taxes."

Doubling the highest estimate that his aides had made, he said that $600-million to $800-million of the capital budget—almost half of the total—involved those current spending items.

"I would hope that as time goes on we could gradually shift them," he said.

To his audience of businessmen, the budget-minded Mr. Beame delivered a message on a variety of current municipal concerns, most of them fiscal, before he sounded his budget complaint in a question session after his talk.

Among the points the Mayor made were the following:

¶He said the city's Economic Development Administrator, Alfred Eisenpreis, would meet later this month with "several leading European companies in an attempt to persuade them to open up branch operations here."

¶He rebuked the "budget brinkmanship" of the New York Public Library for threatening to close branches "in politically vocal communities as a way of getting more funds." Mr. Beame's aides have said that the Mayor is going to stick to his insistence that the library make economies and that he would not bow to any fomented community pressures.

¶He said that failure of the Federal Government to subsidize operations of the city subways could cause a "tremendous fall-off" in use of the city mass transit system. "I believe the state of mass transit in New York City—indeed, all over the United States—is at a breaking point," he said.

NEW YORK TIMES
10-27-74
P. 1 Col. 1

Fiscal Experts See the City In Severe Financial Crisis

By MICHAEL STERN

The government of New York City is in deeper economic trouble today than it has been in at any time since the Great Depression of the nineteen-thirties.

That is the consensus of fiscal authorities interviewed in and out of government who assessed the city's economic situation after Mayor Beame's warning last month that inflation and the recession were putting his $11.1-billion budget for this year $200-million into the red.

The Mayor followed up that warning last week with a talk to the Chamber of Commerce and Industry in which he said that the same forces were opening an even larger gap between projected spending and income for the next budget year.

'Real, Not Phony'

Fiscal crises are annual events in New York, and Mayors have cried wolf so often that Mr. Beame felt compelled to tell his audience that "what I'm talking about is real—it's not phony."

But he is finding a ready credibility for his warnings. Indeed, the broad range of fiscal authorities who were interviewed agreed that the time of crisis really had arrived and that, if anything, Mr. Beame had understated the potential budget gaps, which could mount to more than $1-billion this year and even more next year.

Moreover, these experts add to the list of causes for the budgetary gimmicks and borrowings for day-to-day expenses that were adopted to postpone the day of reckoning by the last three mayoral administrations, including Mr. Beame's, and that are no wadding their own dynamic of increasing interest costs to the city's fiscal problems.

There also is broad agreement that the only ways out of the crisis are heroic austerities and belt tightenings that are unattractive both politically and economically and that may do permanent damage to the city's future.

Among these necessities are:

¶New and higher taxes.

¶Cuts in the Civil Service that would require layoffs as well as attrition reductions in staff.

¶Postponement of capital improvements that are needed to sustain the fabric of the city.

¶Reductions in both low-priority and high-priority services, from park maintenance and library staffing to policing and sanitation.

¶Slowing the seemingly in-

Continued on Page 60, Column 1

Fiscal Experts See the City in Severe Financial Crisis, With Few Ways Out

Continued From Page 1, Col. 2

...reasonable rise in payroll, pen... and fringe benefits costs here has not been at all in proportion to the rapid rise in the costs of city government.

All of these measures would have the effect of easing New York a less desirable place in which to live or do business, thus compounding the departure of jobs and revenues.

At the people and enterprises going rapidly, that has been a driving force behind the strength of the city for more than two decades.

Roderick L. O'Connor, presidential of the Citizens Budget Commission, the nonprofit, business-oriented watchdog, has never been sufficient to meet over New York's finances, as it has budget needs."

To close the gaps, the city has raised taxes, it narrowed the city's budget problems years revenues to pay another years expenses, it shifted expense budget items to the capital budget and adopted other will have to be some radical fiscal expedients, and it waged charges made soon or the city successful campaigns to get is going to go into a trial more aid from the federal and decline." state governments.

Maintaining Political Base

But now the options open to the city are running out, municipal fiscal experts say. Federal and state contributions to the costs of operating the city have risen from less than 25 per cent of the budget in the early sixties to 43.7 per cent in 1972-73. However, the level of these contributions has fallen since then and this year represents only 41.5 per cent.

The difficulty in making such charges, which is conceded by Mr. O'Connor and other critics, is that it is certain to be a political liability.

He also has said he will resist political base.

Mayor cuts service, he it gains political capital he is willing to risk.

In the cure current situation, education of how much public on the subways, maintenance of the way the city manages its of street lines or counseling of purse, is that every municipal program and service has a built-in constituency. When a cut is proposed, however, given a few weeks of consideration, the budget financial basis, he has pend to put the city on a sound welfare clients, he also cuts off.

For the moment, he has rejected the possibility of new taxes, saying that in a period of high unemployment and inflation on the city is a time to what he will and will not do think of taxes."

He also has said he will resign on his campaign pledge to begin phasing out one of the most widely criticized budgetary gimmicks used to reduce the shifting of such items as textbook buying and vocational training from the expense budget, which is financed through taxes, to the capital budget, which is financed through borrowing and therefore carries interest costs.

And he has received for the prevent dismissal of any of the city's 340,000 employees. Public or, he has ordered his Budget Director, Melvin N. Lechner, to reduce the staffs of city agencies by attrition.

Road to Economy

As a first step, Mr. Lechner has told the agencies not to fill 4,700 of the jobs that will be vacant this year. This is expected to save $20 million. However, this would be only 1.5 per cent of the estimated $1bn million that the Mayor said was being added to the city's costs by inflation, high interest rates and high energy costs.

Moreover, there is doubt that these savings can be achieved since they come on top of unannounced mandatory cuts in payroll costs of $168,270,000 that the Budget Director has been requiring of the agencies since the 1974-75 budget year began on July 1.

These cuts are in the form of mandatory accruals—that is, orders that vacant jobs be left unfilled until specified savings are made. The actual rates vary from agency to agency, range from 1.6 per cent in the Fire Department and 3 per cent in the Board of Education to 11.2 per cent in the Department of Correction and 14.9 per cent in the Conservation Office.

Mandatory accruals now are a standard budgetary practice. Even with the transfer of in the city and are a principal $726 million in expenses to the means of helping the Mayor to capital budget, Mayor Beame provide funds for unanticipated still did not have enough in needs or for higher payments costs forced by new labor agreements.

The causes that led mayor one short decade. He acknowledges to go further and the state of near fiscal crisis further down the road towards bankruptcy.

Mr. Beame has acknowledged that the city's economy, which is larger than the economies of many of the world's countries, has not been at all in proportion to the rapid rise in the costs of city government.

When Joan V. Toy drew up Mayor it was said of the New York's real problem of New York was which to live or do business that there were rising 15 per performing the departure of cent a year while revenues

...people and enterprises going rapidly 5 per cent a year.

Mayor Beame in his budget message this year, put the problem this way: "During the ...dent of the Citizens Budget ...10 years normal growth in ...Commission, the nonprofit, the city's tax revenues has business-oriented watchdog never been sufficient to meet over New York's finances, as its budget needs."

...served this situation this way: "Everyone we know should raised taxes, it narrowed the city's budget problems years revenues to pay another years expenses, it shifted expense budget items to the capital budget and adopted other will have to be some radical fiscal expedients, and it waged charges made soon or the city successful campaigns to get is going to go into a trial more aid from the federal and decline." state governments.

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...ments of aid from next year to this year.

He also got the state to approve a device called the Stabilization Reserve Corporation, which is empowered to raise $2bn million outside the debt limit to pay off deficits left over from the Lindsay administration and from the 1973-74 fiscal year, for half of which Mr. Beame was the Mayor.

How many more such devices are left in the City Hall cupboard? Aides to the Mayor says there are none, advisers they do not rule out the possibility that Mr. Beame and his fiscal advisers may invent some new ones.

This also was a year of new and higher taxes for the city. The realestate tax was increased 45 cents to a rate of $7.34 for each $100 of assessed valuation. A penny was added to the combined city-state sales tax, raising it to eight cents on the dollar. A use tax of $15 a year was imposed on owners of automobiles. A 5 per cent tax was imposed on off-track betting. And the tax on banks' income was raised 20 per cent.

Taken together, these levies added an estimated $564-million to the tax burden of individuals and businesses here.

Possibilities Run Out

The city's ability to shift expense budget items to the capital budget also is beginning to run out. The amount of money the city may borrow for capital spending is fixed by law. It may not exceed 10 per cent of the average assessed value of all the city's real estate over the previous five years.

Year by year, the city has been pushing its borrowing closer and closer to that limit, narrowing the margin it should be leaving in reserve for emergencies.

...by all these devices, Mr. Beame was able to make projected revenues cover projected expenses of $11.1-billion. However, it is an open secret acknowledged off the record, that many of the figures that went into making up these totals are fictions. They include sudden sums to pay salary increases for city employees and other anticipated expenses.

Inflated Figures Cited

According to the Citizens Budget Commission, the figures on the revenue side also were inflated to make the budget balance on paper. Herbert Ranschburg, the commission's director of research, said receipts from the stock-transfer tax, which gave the city $140-million in 1973-74, were projected to yield $233 million this year even though trading volume and the prices of stocks have been declining.

Similarly, Mr. Ranschburg said, the Mayor projected $814 million in receipts from the sales tax, compared with actual receipts of $753-million last year, allowing nothing for the cuts in sales that always follows the imposition of higher taxes.

Mr. Beame has acknowledged that the sales tax is producing less revenue than had been expected, but he has insisted that the shortfall will be offset by increased collections from other taxes.

Mr. Goldin, who predicted before the budget was adopted that the 5 per cent levy on gin, would drive bet... out of the city betting parlors, published figures last week to show that this is indeed happening. He again urged the Mayor to repeal this tax and asserted that its projected yield of about $30-million should be erased from the city's budget as unrealizable.

Shortfall in Realty Tax

One disquieting sign of the coming shortfall of revenues is the first quarter's return from the realestate tax. As of the end of September, the arrears amounted to $79.5-million, or 6.45 per cent of the tax liability. This compares with a delinquency rate of 4.94 per cent in 1972-73 and of 5.59 per cent in 1973-74.

The rate of delinquencies may fall later in the fiscal year, but if the first-quarter rate holds, the city will take in $31.4-million less in realestate taxes than it had anticipated.

Similarly, the level of retail sales in the city apparently is not growing as fast as the Mayor or hoped. United States Department of Commerce computations show that department store sales receipts in the city in June were over 2 per cent higher than in June, 1973, and in July only 4 per cent higher than in the previous July.

Since the city had predicted that sales receipts would grow at least as fast as the price level, which went up more than 10 per cent, the tax on these receipts consequently is going to fall short of expectations.

The impact of the 1 per cent rise in the sales tax is problematical. Its effect cannot be this, it goes on spending over and above income from other factors like unemployment and inflation.

But the chief executive of one of the city's major department store chains said he expected the higher tax rate to drive a lot of business from his midtown store to its new Jersey branches.

Lower Tax in Jersey

"The tax rate in New Jersey is only 5 per cent," he said, "and it does not apply to clothing, which is a large part of our business. With that kind of differential, anyone who lives in New Jersey and buys in New York has to be crazy."

When the Mayor said that inflation and recession were putting his budget into deficit, he referred specifically to higher energy costs, to higher rates of interest on borrowings and to the high rate of unemployment. The latter was 7 per cent in August — which was increasing welfare costs and lowering revenues.

He did not mention the impact of inflation on the costs of paying city employees, however. Payroll, pension and fringe benefits take more than 60 per cent of the city's budget and even small increments in these costs have a huge impact.

In March, the Transport Workers Union, which represents subway and bus workers, achieved a major breakthrough when it won a cost-of-living escalator in its new contract. The agreement provides an increase of 20 per cent over 15 months, plus 2.5 cents for every rise of one per cent in the Consumer Price Index.

When the sanitationmen and firemen signed new agreements in July, they won a similar cost-of-living adjustment, and the expectation now is that the police and all other city employees will demand and get the same kind of inflation protection.

Labor Costs Ahead

Since the Consumer Price Index has shown no sign of slackening as monthly rises, the city is facing automatic wage increases that will further widen the Budget deficit. Based on the formula won by the transit workers, an annual inflation rate of 15 per cent, somewhat lower than the actual rate in the last few months, would cost the city $233.7-million over a full year.

Taking all these factors into consideration, and adding in a ... anticipated need for a new transit subway to help keep the subway and bus fares from rising beyond 45 or 50 cents, Mr. Ranschburg of the Citizens Budget Commission, said the city could easily wind up the 1974-75 fiscal year more than $1-billion in the red.

And with next year's ... get already mortgaged through the one-time devices being used to help out this year's expenses, Mr. Ranschburg said the budget gap for 1975-76 could be even higher.

Economists who watch the city's fiscal affairs for some of the maine banks here say those estimates may be a bit high. But they agree that the deficits for both years will be uncomfortably large and will require extraordinary measures, including either new or higher taxes.

Mr. Brady, of the Chamber of Commerce and Industry, said of the problem:

"If a company was in that kind of situation, it would have no choice but to cut costs and practice some austerities until it got back into proper shape again. But the city refuses to do

In past years, city officials have pursued antirecession... in the face of mandatory increases in the budget. They cited, for example, the huge growth in welfare dependency here, which is blamed in the rising of income maintenance for the poor from less than $400-million in 1964-65 to more than $2.5 billion this year.

Now, however, some economists are pointing out that since the federal and state governments pay 75 per cent of the costs, welfare should be regarded as an income guarantee that adds to the city's economy.

By far the biggest reason for the constant rise in city budgets is the increase in municipal payroll costs. This rise is a result of the combined effects of growth in the workforce over the past 10 years (now 220,000 to 340,000 and an increase in those years of 70 per cent in city wage and salary rates.

Rising expectations of the people who work for the city along with increased militancy of their unions, have pushed pay and benefits so far ... they have now surpassed what is offered in private industry for equivalent work.

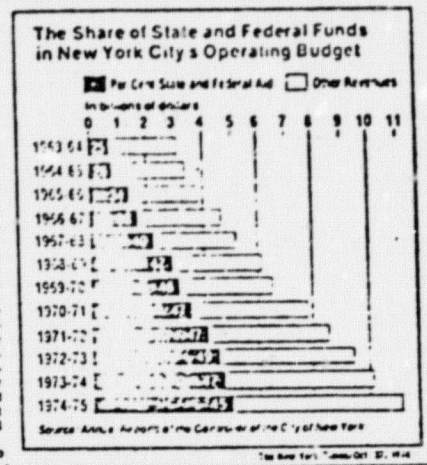
Costs of Pensions

Pension contributions alone now cost the city more than $1-billion a year and by 1980 they are expected to rise to more than $2-billion a year.

These benefits, paid for almost entirely by the city, permit some categories of ... 65 after a lifetime career with combined pensions, annuities and Social Security payments that are higher than their salaries.

Publicly, city officials maintain that they fight the unions hard to hold down payroll costs. Privately, many concede that since the transit workers' strike of 1966 at the start of the Lindsay administration, which paralyzed the city for 12 days, they go into every negotiation with the knowledge that no city administration will ever want to fight a union down to the wire again.

As one long-time aide to the Mayor put it: "That experience traumatized the city. It was a disaster. We can't let it happen again, with the subways, police, the firemen, the sanitationmen or any other vital service. If it costs more money to keep the peace, well, ..." And he shrugged his shoulders.



The New York Times Oct. 31, 1974

11/4 p36 col 2

Near-Bankrupt City

NEW YORK TIMES
11-4-74

The clear implication of the latest figures on New York City's economy is that this city is sliding into bankruptcy with dismaying speed.

Despite all the legerdemain used by Mayor Beame to pretend that a balance between income and outgo had been achieved in the expense budget for the 1974-75 fiscal year, current indications are that the municipal deficit could run as high as $1 billion by the time the year ends next June 30. The gap would be roughly twice as great if the city had not resorted to expensive borrowing to pay its current bills and had not tapped during this year revenue sources which normally would have been used to pay next year's bills.

It would be unfair to put primary blame for this situation on Mayor Beame, still two months short of completing his first year in office; but it is discouraging to learn that he plans to resort to more camouflage of this sort to achieve a similarly fictitious "balance" of the 1975-76 budget.

No one knows better than the Mayor the folly of continuing a course in which debt service takes an ever-bigger share of the tax dollar while schools, subway lines, parks and other needed municipal facilities go unbuilt because half of the capital budget is diverted to paying for salaries, pensions and other day-to-day costs. This year alone, interest and amortization charges went up by more than half, to a current total of $1.8 billion. One dollar out of every six in the expense budget is now going to debt service—a burden of $225 on every man, woman and child in the five boroughs.

• • •

If additional aid is to come from Washington and Albany, especially in such areas as mass transit, health and welfare reform, the city will have to demonstrate much greater capacity to cut payroll costs and raise the productivity of its overprotected civil service employes.

Each day brings news reports of retrogression, even in the few areas where some headway toward greater efficiency had been recorded in recent years. Thus, the old story of nearly half the Sanitation Department's trucks and mechanical sweepers reported out of commission at any one time is recurring, after a year in which the breakdown rate was cut dramatically.

The Board of Education is on the verge of taking over fiscal management of at least three decentralized school districts because of payroll padding and other loose practices. Ineffectiveness in the city's program for emergency repairs in slum buildings has resulted in the withdrawal of $8 million in Federal funds. Similar complaints by the state about lax supervision of municipal day-care centers have impeded needed help for working mothers and their children.

Mr. Beame and his overworked chief aide, Deputy Mayor Cavanagh, cannot straighten out this gargantuan mess alone. The city is not a gigantic candy store, subject to two-man management. The books cannot be balanced by letting attrition take care of a slow and uneven shrinkage in over-all manpower. A drastic, even ruthless, economy plan is needed.

NEW YORK TIMES
11-9-74
P. 1, col. 2

City t[illegible] Outlays Again; New Construction Halted

$330-Million Reduction in Pay and Services Ordered by Beame

By MICHAEL STERN

Responding to what he called "an emergency" and "a totally unheard of situation" brought on by inflation and the recession, Mayor Beame is ordering a new round of budgetary belt-tightening that will cut city payrolls and services by $330-million. He had earlier ordered reductions of $120-million.

At a Gracie Mansion luncheon with the Board of Estimate and Council leaders yesterday and at a City Hall news conference later, the Mayor revealed that austerities of that magnitude, affecting every department of city government, were needed to keep his $11.1-billion expense budget — the day-to-day costs of running the city—from drifting into deficit.

Mr. Beame said the basic arithmetic of the situation was that higher costs of $280-million and revenue shortfalls of $150-million were building up a potential deficit of $430-million by next June 30.

He [illegible] hoped to reduce that sum by $100-million through previously ordered payroll cuts of $30-million and other devices. The rest will have to come out of basic services.

I hope by the end of this month I'll be able to put into

Continued on Page 64, Column 1

Beame Orders $330-Million to Be Cut From Pay and Services

Continued From Page 1, Col. 2

effect a program to balance the budget," Mr. Beame said. "We are determined to avoid borrowing if it is at all possible, but we can't cripple vital services."

In another move that further deepened the economic gloom settling over the city, Budget Director Melvin Lechner yesterday put a 30-day hold on $316-million worth of construction contracts that were about to be let for bidding under the city's $1.3-billion's worth of city funds in the over-all $1.76-billion capital budget.

The expense budget, supported by taxes, Federal and state aid and short-term borrowing, covers the day-to-day costs of the police, fire, sanitation and other services offered by the city.

The capital budget, supported by long-term borrowing, is intended to cover permanent improvements, such as schools, fire engines, street lights and water mains, although increasingly it is being used to cover expenses that the city's Mayors can find no room for in the expense budget.

The Mayor's briefing of top city officials yesterday followed by two months his first warnings that inflation and the recession were building up a $200-million expense-budget deficit.

Concern has been mounting since then, as fiscal experts in and out of government, making their own assessments of the city's troubled economy and shrinking public purse, projected much larger potential deficits.

In his statements at Gracie Mansion yesterday, and in an interview with The New York Times on Thursday, which he asked the newspaper not to publish until he could brief city officials on his intentions, Mr. Beame said the current situation was the worst fiscal crisis that New York had suffered.

"It's going to be tough, very tough, for the people to accept some of these things, but I hope they will support me, and I think they will if they understand the seriousness of the situation."

Mr. Beame said his new projections of revenue shortfalls and rising costs were based on the assumption that "things won't get any worse." If the rate of inflation steepens, if the recession deepens, or if unemployment worsens, he said, then even further austerities may become necessary.

Using boards covered with columns of figures, and charts, the Mayor told members of the Board of Estimate and the Council that the $330-million would have to come out of the $4-billion of the expense budget that is under his direct control and not out of the parts supported by Federal and state programs.

If the cuts were applied across the board, he said, there would be an 8.5 per cent reduction of spending by all departments. This would mean, for example, $62.2-million less for the Police Department; $74.1-million less for the Board of Education; $26.9-million less for Health and Hospitals, and an equal amount less for the Environmental Protection Administration, which includes the Sanitation Department.

Earlier Moves Made

Such deep cuts would be difficult to impose because they would come on top of more than $169-million in staffing costs already being taken out of departmental budgets since the beginning of the fiscal year through orders not to fill vacant jobs. They also would come on top of the $30-million in payroll cuts ordered by Budget Director Lechner last month.

Mr. Beame said he was not proposing across-the-board cuts. Rather, he said, he is asking the departmental administrators and commissioners to develop their own proposals within a week.

"We don't want to impose anything until we get the thinking of the people who run the agencies," he said.

But he warned that if the departments and agencies did not cooperate he and his budget aides would have austerity programs of their own ready to make sure that sufficient spending reductions were made.

"For eight years John Lindsay cried "wolf" and the public no longer believes—they think it is just for Albany's sake," he said, referring to the former Mayor's battles with the Legislature over aid. "I want you to know this is not crying wolf," Mr. Beame said.

Ahead for the Mayor is a series of 12 meetings in the next two weeks with 22 different groups, including unions, businessmen's organizations and civic agencies, all designed to explain the budget crisis and to win public support for the austerities necessary to meet it.

Mr. Beame also intends to meet Governor-elect Hugh L. Carey and leaders of the Legislature as well as the New York City Congressional delegation to discuss additional aid for the city.

He said he hoped that the strengthened Democratic majorities in the House and Senate and the incoming Democratic administration in the state might produce more fiscal aid for the city. The state and Federal governments now provide 46 per cent of the city expense budget.

Tax Income Down

However, observers in Washington and Albany have said that inflation and the recession are creating budgetary problems there, too, and that prospects for new revenues for the city are slim.

The Mayor said the national economic slowdown, which is being deeply felt here, has been cutting receipts from all city taxes. The stock-transfer tax, for example, is now expected to produce $68-million to $70-million less than projected, and the sales tax $14-million less.

The $30-million in staff cuts ordered last month are to be achieved by leaving unfilled 4,700 jobs that will become vacant by attrition by next June.

The Mayor hopes to get $70-million more to offset the projected $430-million deficit this way: $15-million from increased parking-violations collections; $25-million in additional interest income on the city's investments, and $30-million in projected interest costs to be saved by cutting borrowing in anticipation of state and Federal aid.

'Our Bonds Are Good'

At his City Hall news conference, Mr. Beame said: "This is no fault of our operation. The bulk of it was from the inflation and the recession."

Then, banging his fist on his desk for emphasis, he said: "I want you to understand that this has no relationship to the word 'bankruptcy.' Our bonds are good and secure. They will be paid."

Asked about the need to impose new or higher taxes, Mr. Beame said in his interview that he would do everything he could to avoid them.

He listed four factors that would determine how successful he will be: how quickly the economy reverses its downward trend and begins moving upward again; how much state aid comes to the city from Albany; how much Federal aid comes from Washington, and how cooperative the city's citizens are in accepting the austerities he is about to impose.

He vigorously denied assertions made by such groups as the Citizens Budget Commission and the Chamber of Commerce and Industry that he had put together an unworkable budget and that he should have foreseen the impact of national economic troubles on the city economy.

"We made up the budget last May and June on the basis of the best economic information available to us," Mr. Beame said. "We made realistic projections, but they were made unworkable by a downturn in the economy and worse inflation than anyone expected."

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Shy $330M, Beame Might Fire 33,000

By MARK LIEBERMAN

Mayor Beame warned yesterday that the city might have to fire as many as 33,000 employes before the fiscal year ends next June 30 to close a $330 million deficit in its budget. Beame also hinted that he was considering imposing an absolute freeze on new city hiring.

The mayor offered the cost-cutting proposals in a 25-minute appearance before the City Council yesterday while he appealed to the lawmakers for cooperation after necessary budget cuts are ordered.

The impending cuts, he said, would bring pressure on the councilmen and "create problems for you in your communities."

"We'll take the brunt of it, of course, but we want your cooperation," the mayor said. "Don't you create problems for us."

Beame specifically asked the Council members not to advise their constituents to demonstrate at City Hall to protest against any budget cuts. But as the mayor spoke, a group of about a dozen physicians from the city's municipal hospitals gathered outside City Hall to protest against the $26.9 million cut that Beame is aiming for in the Health and Hospitals Corp.

8½% Across the Board

Dr. Lothar Wertheimer, the chairman of the Council of Medical Boards of the 19 municipal hospitals, said the cut would mean the closing of at least five hospitals and of most out-patient departments

The mayor, in his unscheduled appearance before the Council, did not specify where the budget cuts would take place, but told the Council—as he has told other groups in recent days—that he is considering an 8½% across-the-board slash.

Beame has asked the heads of city agencies to determine what cuts can be made and to analyze the impact of an across-the-board cut.

Such a cut would trim $62.2 million from the Police Department, $26.9 million from the Environmental Protection Administration, 326.1 million from the Fire Department, $74.1 million from the Board of Education and $14.2 million from the Board of Higher Education, in addition to cuts in other agencies.

The Municipal Services Administration, in its report to Budget Director Melvin Lechner, indicated that the required $6.6 million cut in that agency would mean the firing of at least 100 of its 4,125 employes.

Beame's appeal for cooperation from the Council drew an immediate pledge from Council Finance Committee Chairman Matthew J. Troy Jr. (D-Queens), who had clashed with the mayor over the budget before its adoption in June.

"I'm prepared to back him all the way," Troy said, "as long as the cuts are distributed equitably among all segments of the administration."

Troy said that some of the cuts now proposed to the mayor were suggested by Troy himself in June — deferment of the training of new police officers, for one. He said that such a delay could result in savings of as much as $19 million in the Police Department's budget.

NEW YORK TIMES
11-23-74
P. I, Col. 8

BEAME CUTS 1,510 WORKERS AND IMPOSES A JOB FREEZE TO SAVE CITY $100-MILLION

OVERTIME CURBED

Dismissals Are First of This Size Since the Depression

By MAURICE CARROLL

Mayor Beame, proclaiming "the toughest austerity program since the Depression," said yesterday that 1,510 city employes would be dismissed and that a vacancy job freeze would be imposed on every agency, including the Police and Fire Departments. They will be the first large-scale dismissals here since 1934.

The Mayor originally asked city agencies to provide suggestions for across-the-board cuts of 8.5 per cent that would overcome a looming budget deficit of $330-million. But he said today that the suggestions, when assessed by City Hall, had proved to be "crippling" and "unthinkable."

Instead, he said, he is imposing a $100-million cutback —mostly by dropping the 1,510 employes out of a total work force of 350,000, a figure that has remained relatively constant for five years—and will try to make up the difference by getting more money from Albany and Washington.

He did not say so, but it appeared impossible—if the figures of the Beame team on the developing deficit in the $11.1-billion city budget are accurate —that New York would be able to avoid borrowing before the end of the fiscal year.

Misconception Cited

In discussing the dismissals of the civil servants, many of whom will lose their jobs at Christmastime, the Mayor said it was a common misconception that civil servants could not be dismissed except for misbehavior. Layoffs, he said, will be in reverse order of seniority and those laid off will be the first to be rehired when jobs reopen.

To help fill the shortage that he has projected in the budget for the fiscal year ending next June 30, Mr. Beame ordered the following:

¶The dismissal of 510 Civil Service workers and 1,000 provisional employes—those who have not yet passed their Civil Service tests—and the reassignment of 782 others to curb overtime. The dismissals are to start Dec. 1, and should be completed over a period of weeks.

¶An across-the-board hiring freeze when a worker quits, which would reduce the size of the city's work force.

¶Cancellation of planned police hiring, representing a retreat from Mr. Beame's election campaign promise to hire 3,000 new police officers.

¶Elimination of 12 fire companies (the Beame team said the specific ones had not yet been picked) and two medical substations.

¶Cutbacks in rush-hour service on the Staten Island ferry, saving 13 jobs by increasing headway from 10 to 12½

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minutes.

¶A mixture of miscellaneous matters—an "energy conservation" program by the Municipal Service Administration, cutbacks in contracts with outside agencies by the Human Resources Administration and the Addiction Services Agency, and unspecified increases in fees for taxis, golf, tennis, street-cuts and electrical inspection.

In connection with the freeze on police-hiring, when he was running for election as Mayor last year in a campaign dominated by safety-in-the-streets issues, Mr. Beame promised to hire 3,000 police officers. Later under financial pressure at budget-making time, he trimmed that pledge to 2,340.

Yesterday, Mr. Lechner explained that 600 police officers had been hired so far, and that that would be that for the year. Other officials said that the police force, which would have totaled 32,700 next June 30, would be 30,300 then instead, allowing in both numbers for normal attrition.

The Mayor said with a trace of irritation that the Board of Education — which had been listed to find $74.1-million in the across-the-board suggested savings of 8½ per cent he had asked for—had not yet submitted its suggestions. As a "non-mayoral" agency, the board gets a lump-sum budget and is then subject to few City Hall controls.

"We'll get it from them," Mr. Beame said during a 57-minute news briefing in the newly painted Blue Room at City Hall, "and if we don't then we'll . . ."

He paused, and there was a babble from the crowd; "you'll what? You'll what?"

"Then we'll remember it,' Mr. Beame said grimly.

Impatiently tapping his fingers and frequently interjecting comments during a gloomy talk with charts by his budget director, Melvin Lechner, the Mayor interrupted when someone asked if the positions to be wiped out were simply budget

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(Cont'd)

"No, no," Mr. Beame said, "these are all people."

He first briefed senior city officials on the program, then talked to newsmen, then left for Gracie Mansion to try to soothe leaders of municipal labor-unions into accepting the first dismissals of civil servants in an economy move since more than 1,000 were let go in 1934, during the Depression.

"There's always some slippage," a mayoral aide explained.

Such layoffs hurt those affected even mor than layoffs from private jobs, since city workers do not collect unemployment compensation.

The biggest single item in the austerity package came from the Health and Hospitals Corporation, which proposed to make up $26.9-million, not by cutting services, but by "improved collections" of state, Federal and hospitalization claims.

The second item also on the revenue side was $15-million through increasing sales of city-owned property.

"What it means," the Mayor's press secretary, Sid Frigand, explained, "is jostling some of these departments that put 'holds' on property."

The final details of the City Hall package were shaped even as the Mayor began his briefing for the Board of Estimate and leaders of the City Council. The last of the agency proposals were trimmed then, so late that, as the press briefing began, Marcia Horowitz, an assistant in Mr. Frigand's office, knelt on the beige wall-to-wall carpet frantically collating the duplicated sheets of statistical summary.

There were two summaries —the dire things the agencies said might be done to make up the $330-million, and the trimmed package ordered by Mr. Beame, totaling $100.4-million.

"The Mayor didn't completely bite the bullet," one politician suggested. "He nibbled on it."

The initial suggestion would have resulted in cuts of more than 20,000 city jobs and major cutbacks in service.

"Far too drastic in terms of the city's economy and the public's welfare," Mr. Beame said.

He ordered the following Civil Service job cuts: 143 superintendents' drivers in the Environmental Protection Administration; 164 aides in the Corrections Department; 140 hourly paid positions in the Health Services Administration; 50 Municipal Service Administration workers, 13 ferry crew members.

Provisional Jobs Affected

Provisional positions that were cut (the exact jobs remained to be listed) included: eight in the Police Department, 73 in the Environmental Protection Agency, two in the Fire Department, 10 in Corrections, 222 in the Social Services Department, 70 in Health Services, 18 in the Municipal Services Administration, 10 in the Parks Department, 43 in the Transportation Department, nine in the Finance Administration, 30 in the Human Resources Administration, 16 in the Addiction Services Agency, 95 from the Board of Education, 100 from the City University, 45 in the courts and 249 in other departments.

The job cuts, along with service reductions, were the most he could do now, Mr. Beame said, explaining: "I cannot in good conscience recommend further slashes at this time."

He said that his plan was far short of closing the projected budget gap.

N.Y. Times
11/26/74
pl col 6

...ATED ...ISCIPLINE

...Administrator Of ... Meeting ... Defended ... Member ... Party

By MARTIN ARNOLD

... Monserrat, a member of the Board of Education, attended meetings here and in ... last year with a $21... board contract with a manpower training company while the company was paying him as a public relations consultant, according to an account yesterday by a board administrator.

The account, by Bernard ..., personnel and research administrator who was at the ... in 1971, appeared ... conflict with Mr. Monserrat's ... remarks that he had nothing ... to which the award that year ... of the contract to the company, ... Vitalta International Consorti... Vitalta paid Mr. Monserrat ... $1,000 as a consultant.

Mr. Monserrat has maintained that he stopped representing Vitalta before the company became involved with public funds.

Reached last night, Mr. Monserrat said he had a "vague" recollection of attending such meetings with manpower and education officials but he maintained their purpose was in no way to ... the contract.

... Column 3, Column 1

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...tion School Budget Cut Offered

...tive Council the ... teachers, including those ... of ... protocols.

... the ... abbreviation, in ... ... subject of a cr... ... from the state ...

... to the ... ... a board of ... ... establishing a system to ... a monthly ... of ... and ... ... have ... teachers' salaries for ... ... The system will ... ... the superintendents to ... ... ensure uniform ... proper ... ... [illegible] ... in cases of ... ... teachers, the board spokesman ... said.

...ple's West Side Highway Plan ...ticized by Community Boards

By STEVEN R. ... [illegible]

... representatives of six Manhattan ... time to study Mr. ... ... by boards in Manhattan ... appeal for more ... ... hearing officer and the Board of Estimate for ... ... [illegible] ... proposal for ... and ... [illegible]

... Community Boards Comment

... Comments ...

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...	6.1
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... stations ...	9.0
...	13.7

NEW YORK TIMES

12-13-74

Pg. 52, Col. 1

School Board Cuts Capital Plans Of $450-Million to $130-Million

By GLENN FOWLER

The Board of Education, facing what its president called "the grim fiscal reality in the city," yesterday scaled down from $450-million to $130-million its request for money to build new schools in the 1975-76 capital budget.

James F. Regan, the board's president, also proposed abandoning 11 major building projects already authorized to receive $31-million in city funds, but on which work has not yet actually started. He also suggested postponing until at least July 1, 1976, further financing for 13 additional new or modernized schools that have so far been allotted $29-million.

"Our needs are valid and real, but with a sense of responsibility and urgency we have carefully reconsidered our original request," Mr. Regan told the City Planning Commission on the last of three days of hearings at City Hall on the capital budget for the fiscal year beginning next July 1.

Consideration Urged

The decision to cut more than 70 per cent from the request made two months ago, Mr. Regan said, came after the Planning Commission, in its draft budget, which is the subject of the hearings, failed to allot any money whatever for construction of schools not actually started yet.

The board, he said, felt that the $130-million it was still asking for should be judged in light of its offer to save a total of $60-million immediately by eliminating the 11 financed projects and proposing postponement of the 13 others.

In consideration of this, he asked the Planning Commission to raise from $87-million to $129-million the sum it proposed to allocate to the school system in the 1975-76 budget for maintenance, minor moderization work, site acquisition and purchase of books and supplies.

In the current fiscal year, the Board of Education received a total of $343-million, but $210-million of this is subject to being rescinded under the "freeze" ordered early last month by the city's Budget Bureau on all unstarted projects.

The schools receive by far the largest share of capital construction money spent by the city each year. The capital budget ostensibly deals only with additions to or upgrading of the city's physical plant and equipment.

Critics, however, contend that an increasing number of items from the much larger expense budget are transferred each year into the capital budget, leaving less for construction work. A prime example is the inclusion of $148-million for operation of vocational schools in the proposed $1.79-billion capital budget for 1975-76.

The 11 major school-construction projects proposed by the Board of Education for elimination from the 1975-76 capital budget are as follows:

Park East H. S., Manhattan, Second and Third Avenues, 92d to 94th Street.

Seward Park H. S. addition, Manhattan, Grand and Essex Streets.

I. S. 207 and P. S. 232, Bronx, Wilkins Avenue, Boston Road, 170th and 172d Street.

I. S. 194, Bronx, 180th Street and Honeywell Avenue.

P. S. 10, Bronx, Kelly and Beck Streets, Longwood and Intervale Avenues.

P. S. 145 addition, Bronx, 165th Street and Trinity Avenue.

P. S. 212, Bronx, 153d Street, Brook Avenue, Henrey Place and Westchester Avenue.

I. S. 220 and P. S. 302, Brooklyn, Fourth and Fifth Avenues, Baltic and Douglass Streets.

The following 13 major projects are proposed for postponement until the fiscal year beginning July 1, 1976:

Hearon H. S. modernization, Manhattan, 10th Avenue between 55th and 59th Streets.

I. S. 13, Manhattan, Forsyth, Hester, Canal and Eldridge Streets.

I.S. 172, Manhattan, Amsterdam and Edgecombe Avenues, 145th Street and Jumel Place.

J. H. S. 8, modernization, Manhattan, Hudson and Grove Streets.

P. S. 43, Manhattan, Wadsworth Avenue and 154th Street.

P.S. 145, modernization, Manhattan, vicinity of Amsterdam and West End Avenues, 105th and 107th Streets.

East Brooklyn H. S., vicinity of Fresh Creek.

Clove Barton H. S. modernization, Brooklyn, President Street and Classon Avenue.

P. S. 138, modernization, Brooklyn, Park Place and Rogers Avenue.

P. S. 149 annex, Brooklyn, Clove Road and Maltbie Street.

West Queens H. S., Broadway and 20th Street.

P. S. 12 addition, Queens, vicinity Woodside Avenue and 70th Street.

Center for Language and Hearing-Impaired Children, Queens, 58th Lane and 60th Road.

CITY, IN DISMISSING 3,725, INCLUDES 1,100 IN SCHOOLS, 900 IN UNIFORM; WILL FORCE 2,700 OTHERS TO RETIRE

740a

The New York Times/Edward Hausner

Mayor Beame announcing dismissals of city employes yesterday. With him are Melvin N. Lechner, left, Budget Director, following a list of job types, and First Deputy Mayor James A. Cavanagh. The scene is a news conference held in City Hall.

New York Times
12-12-74
P. 1,

New Dismissals of Permanent and Provisional Employes

	Permanent	Provisional
Police Department	400	15
Environmental Protection Administration	235	74
Fire Department	150	Uniformed Forces 5
Department of Correction	45	Uniformed Forces 25
Transit Authority	45	
Housing Authority	25	
Department of Social Services		506
Health Services Administration		162
Municipal Services Administration		41
Parks, Recreation and Cultural Affairs		20
Transportation Administration		73
Finance Administration		22
Human Resources Administration		56
Addiction Services Agency		24
Education	900*	
Higher Education	200	
Staff of Elected Officials		75
Court Employes		102
Other (Library and Cultural Institutions)	200	325
SUB-TOTAL	2,200	1,525
Reduction in extension of mandatory retirement (Permanent and Provisional)	2,700	
TOTAL (Except substitute teachers)	6,425	

* Plus substitutes, 2,775 full-time teachers

SEVEREST LAYOFFS

Beame 'Terribly' Sad in Announcing Cuts —Unions Angry

By FRED FERRETTI

Mayor Beame announced yesterday the dismissal of 3,725 city employes — including policemen, firemen, sanitationmen and teachers—and the forced retirement of 2,700 elderly employes to help reduce the city's budget deficit to $135.4-million.

The 3,725 permanent and provisional employes will receive dismissal notices by next week, Mr. Beame said. The 2,700 elderly employes, both permanent and provisional, will be forced to retire by June 30, the end of the current fiscal year.

Included in the dismissals are 900 in the uniformed forces—including 400 members of the Police Department, 235 in the Sanitation Department and 150 in the Fire Department.

Political Appointees Let Go

Of those dismissed, 2,200 are career civil servants, including 1,100 teachers and educational researchers, and 200 librarians and employes of the city's cultural institutions. In addition, 1,525 appointed provisional employes—including 400 of the Mayor's political appointees and 125 appointees in the $25,000 to $35,000 salary bracket—are being let go.

The number of layoffs far exceeded earlier estimates. Throughout Tuesday night and yesterday morning, the Mayor and his Budget Bureau combed through personnel lists and added to earlier lists.

Yesterday's layoffs, added to the 1,510 announced by the Mayor almost three weeks ago, raise to 7,935 the number of city employes ordered discharged or forced to retire. This is more than 2 per cent of the city's total work force of 338,524.

City Dismissing 3,725 More Employes

Deficit Is Reduced

The layoffs and a series of economies have reduced by almost three-quarters the deficit in the current fiscal year from its estimated peak of $430-million.

The Mayor, sitting hunched forward in a high-backed chair in the City Hall Blue Room and speaking in a soft voice that cracked several times, described himself as "terribly saddened" and said:

"I don't like this. I'd be the last one in the world to do this. I came up through the Civil Service. I know what it's like to get a job you worked for, you came up for. I don't want to hurt anybody."

The layoffs marked the severest round of budget cutting in the city's history, far surpassing those announced three weeks ago, which Mr. Beame then called the most devastating since the Depression years.

Extensions Denied

In giving details on the release of the elderly, Mr. Beame said that 2,700 employes 65 years of age or over who have had or are scheduled to have extensions of their city service would be denied these extensions. And, the Mayor said, 875 substitute teachers hired daily by the Board of Education will not be hired, creating "the equivalent of a further reduction in teachers." These 875 reductions are not included in the total of 6,425 layoffs, the Mayor said.

The personnel cuts account for about $56-million, the Mayor said. The remainder of the savings, $38.2-million, will come

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from reimbursements to the city of money owed to it by the state, increases in fees, reimbursement to the city by the Offtrack Betting Corporation of $5-million owed for purchase of a computer, changes in tax levy formulas and the closing of 23 interim day-care centers.

The Mayor said that in all cases he had consulted with the heads of the unions representing city workers and had worked out the cuts with them. In general, cuts will be made on seniority basis, but Mr. Beame said Adrian P. Burke, the corporation counsel, was studying the possibility of considering productivity along with length of service.

Despite the Mayor's assurances that the union leaders had been consulted and its implication that they had acceded to the layoffs, reactions from the leaders indicated otherwise.

Victor Gotbaum, executive director of the 110,000-member Municipal Employes Union, said: "The Mayor is putting the economy completely on the backs of the workers. So far, he had not negotiated with the unions." Albert Shanker, president of the United Federation of Teachers, called the Mayor's proposed cuts "intolerable" and asserted: "The U.F.T. sympathizes with the city's difficulties but cutting school positions is entirely unacceptable."

John J. DeLury, president of the Uniformed Sanitationmen's Association, said "the procedure now being followed is wrong and is doing great damage." And Richard J. Vizzini, president of the Uniform Firefighters Association, said "the city is proceeding headlong in the directions of potential loss of life and injuries from fire."

Not as chagrined as the labor leaders was the Board of Higher Education, which nevertheless said through a spokesman, Robert Moulthrop, that the 200 dismissals there were "of a different order of magnitude than that presented to us originally."

Representative Herman Badillo, Democrat of the Bronx, urged the Mayor to forgo personnel cuts and temporarily suspend the layoffs pending Congressional approval of the $2-billion Federal Emergency Employment Act which Mr. Badillo said was "imminent."

Under it, he said, the city would receive $70-million for the current fiscal year, which Mr. Badillo said the Mayor "can use to maintain most employes on the payroll."

DeLury Has Plan

Mr. Beame has summoned the city's labor leaders to a 9 A.M. conference at Gracie Mansion today to seek ways to avoid further cuts. Mr. DeLury has already said he has a proposal, but he has declined to be specific. However, it is understood that among the items to be discussed today are the possibilities of payless work days, payless vacation days and across-the-board cuts for all city employes.

It could not be immediately determined how broadly the layoffs would affect such segments of the municipal labor force as blacks, Spanish-speaking people and women. After the first round of layoffs, Eleanor Holmes Norton, the city's Commissioner on Human Rights, warned all city departments that there might be legal problems if the dismissals fell too heavily on minority groups and on women.

The City Council Finance Committee is also scheduled to meet today to discuss the possibility of voluntary pay cuts for the city's 43 Councilmen. It is also known that Mr. Beame has discussed with other members of the Board of Estimate—the five borough presidents, the City Council President, Paul O'Dwyer, and Controller Harrison J. Goldin—the possibility of each member forgoing the $5,000 raise he is to receive Jan. 1.

'A Desire to Help'

Mr. Beame said of these discussions: "There is no dissention on the Board of Estimate. There is a desire to help. We are discussing the possibility of some over-all plan. The board is not unaware of the situation." He declined to say whether there was agreement on the board. It was reported that two borough presidents had resisted the salary-cutting suggestion.

The Mayor said he was aware of the positions of many city unions that civilians ought to be dismissed before uniformed men. But he said, "You've got to remember if you take out a civilian and put in a uniform then you take a uniform off patrol."

Asked if he expected any union job action, as had been suggested by Mr. Gotbaum, the Mayor said: "I don't expect it. I don't think it should happen. We're asking for cooperation not only from the unions and employes but from the public. What we are trying to do is have the least impact."

He said that the cuts would go "all the way up" and would include many political provisionals.

He denied angrily that any of these "got their jobs because they worked in my campaign." He said: "They got their jobs because they're equipped to do the job. In my opinion, they're better equipped than those who were there before."

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1-16-75
Pg. 2

Beame Slices 4,050 More Jobs

Layoffs Now Total 11,985; Budget Gap Still $120M

By MARK LIEBERMAN

Mayor Beame dropped his economy ax again yesterday, this time on the necks of 4,050 city workers in an effort to pare another $15 million from the city's deficit. They included 3,300 career civil servants.

The new round of firings, the third in as many months, will take effect next month. Among its victims will be 750 uniformed city employes including 300 cops.

News photo by Frank Russo

Budget Director Melvin Lechner speaks at City Hall.

Phase 3 of the mayor's austerity program will bring to 11,985 the number of workers dropped from the city payroll to close the budget gap that Beame originally estimated at $400 million. The dismissals represent about 3.5% of the city's 338,524 man work force.

"Full Negotiations"

Beame met with 18 municipal labor leaders late yesterday and agreed to hear alternatives before distributing dismissal notices. The mayor said the meeting Tuesday would deal only with the layoffs announced yesterday and that career civil servants would be dismissed as planned under Phase 1 and Phase 2.

However, Victor Gotbaum, executive director of District Council 37 of the American Federation of State, County and Municipal Employes, said the labor leaders would begin "full negotiations" with Beame.

"We know that the budget gap can be closed without the laying off of one permanent civil servant," Gotbaum said. "There will be no consummation of layoffs until negotiations are completed."

Gotbaum contended that, instead of the layoffs, provisionals and political appointees should be fired and the city should end the practice of "contracting out" work.

The announcement of the latest firings came just a day after Beame said no decision had been made about the third phase of the economy push. Beame was not in City Hall to wield the ax.

"The clock is winding down and unpleasant as the task is, the budget gap is very real and we have to take positive action," the mayor said in a statement.

Budget Director Melvin Lechner refused to say that the new dismissals would be the last in efforts to balance the budget, which has but five and a half months to run.

"We are taking this one step at a time," Lechner said.

Included in the firings will be 180 firemen and 180 sanitationmen, 35 correction officers, 35 transit police and 20 housing cops.

Responding to the announced plan to fire 300 city cops, the Patrolmen's Benevolent Association said it would call a strike or job action if a single policeman was laid off.

Richard J. Vizzini, president of the 10,500-member Uniformed

(Continued on page 29, col. 4)

Firing Breakdown

Here is a breakdown by agency of the firings announced by Mayor Beame yesterday:

Uniformed forces:		**Career Civil Servants (mayoral)**	
Police	300	Social Services	285
Sanitation	180	Environmental	112
Fire	180	Transportation	113
Correction	35	Parks & Recreation	98
Transit police	35	Police (civilian)	79
Housing police	20	Municipal Services	71
		Housing Services	68
Nonmayoral agencies:		Other	174
Board of Education	700	Architects and	
Higher Education	200	engineers (all	
Hospitals Corp.	400	agencies)	207
Architects and		**Totals:**	
engineers (all		Career (mayoral)	1,207
agencies)	43	Career (nonmayoral)	1,343
Provisionals		Uniformed	750
(all agencies)	750	Provisional	750
			4,050

742a

4,050 More Jobs Sliced by Beame In Budget Crunch

(Continued from page 2)

Firefighters Association, vowed that his union would "fight this action with all the resources at our command." But he did not directly threaten a job action.

"Although we are aware of the city's financial problems, we can only point out that not even in the depths of the Depression of the '30s was there any thought of cutting back on vital services such as the Fire Department," Vizzini said.

He'll Press Efforts

According to Beame, the actions he announced earlier combined with yesterday's firings would leave the city with a budget deficit of $120.4 million. The mayor said he would "continue our unrelenting efforts at both the state and federal levels for the financial aid to which this great city is entitled."

No career civil servants have been fired yet under the layoffs announced Nov. 22 and Dec. 11. On Nov. 22, Beame said 1,510 employes would be fired, including 510 career workers. Last month, the mayor said an additional 3,725 — including 2,200 career workers — would be fired. These workers included 2,700 beyond age 65 and 875 in substitute teaching positions.

They'll Be Gone Soon

Lechner said that of the 2,710 career workers involved in the earlier firings, most would be gone by Feb. 1. Those include, he said, 900 teachers in the Board of Education, 200 teachers in the Board of Higher Education and 900 members of the city's uniformed forces.

He added that, of the first 5,235 firings, 988 workers have been transferred to federal or state payrolls — most of them to a state Department of Social Services program.

News photo by Frank Russo

Mayor Beame is queried at City Hall on job cuts.

Uniformed Agencies Here Told to Issue Dismissals

744a

N.Y. TIMES
1-17-75
p. 37, Col. 1

Police, Firemen, Sanitationmen Among 900 to Be Jobless as of Jan. 31— Union Leaders Meet Today

By JOHN DARNTON

The city's Budget Bureau notified the uniformed services departments yesterday to send out dismissal letters today to 900 policemen, firemen, sanitation men and others in the uniformed forces whom Mayor Beame, on Dec. 11, had ordered laid off. The dismissals are to be effective Jan. 31.

The move all but signals the collapse of a plan, agreed upon by the Mayor and union leaders last month, to hold the dismissals in abeyance to give the unions time to persuade elderly workers to retire voluntarily on their pension benefits. The plan has been lagging.

The move also set the stage for a potential confrontation between the city administration and the union leaders, who are to meet at 10 A.M. today to discuss strategy to thwart the layoffs.

The meeting is to be held at the offices of District Council 37, State, County and Municipal Employes, at 140 Park Place. It was called after the third round of layoffs was announced Wednesday to bring a gaping budget deficit down to a figure that Mayor Beame now puts at $120-million.

In the third round, 4,050 additional city workers—including 2,000 Civil Service employes—were ordered dismissed effective next month. It brought to 11,985 the total of city employes to let go by next June 30.

There were these other budget developments yesterday.

¶Dr. John L. S. Holloman Jr., president of the Health and Hospitals Corporation, issued a statement insisting that the corporation had been "responsive" to the Mayor's "budget problems" in the past, but would withhold action on the Mayor's cutback of 400 more hospital workers until the board of directors meets Jan. 24.

¶Police Commissioner Michael J. Codd noted that the state's Taylor Law prohibited strikes by public employes. A strike as a last resort has not been ruled out by Kenneth McFeeley, head of the Patrolmen's Benevolent Association.

¶Deputy Mayor James A. Cavanagh said he would go to Albany on Monday to confer with aides of Governor Carey on additional state aid to the city.

¶Mayor Beame prepared for a meeting this afternoon at Gracie Mansion with members of the New York Congressional delegation. He will brief them on the city's fiscal plight and map strategy for legislation for additional Federal aid.

The municipal union leaders, who met with the Mayor for an hour and a half Wednesday evening and agreed to meet again with him next Tuesday, have alternated in their public statements between militancy and conciliation. They refer to the Tuesday meeting as a "negotiating session."

John J. DeLury, head of the Uniformed Sanitationmen's Association, said. "We have taken a pledge that not one regular Civil Service worker will be let go."

The chief item on the agenda of the union leaders today will be their alternatives in the face of the layoffs. These include a proposal that more provisionals and "political" appointees be let go instead of Civil Service workers; an attempt to salvage the "early retirement" plan by adding financial inducements, and possible job actions.

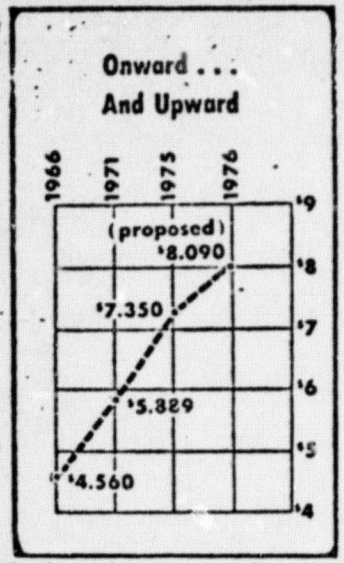
While there has been some private talk of a strike, most of the leaders tend to discount it. Victor Gotbaum, executive director of District Council 37, said: "I have a simple policy. If you're going to strike, you strike. You don't talk it."

The dismissal notices that the Budget Bureau ordered yesterday will affect the following: 400 policemen, 235 sanitationmen, 150 firemen, 45 correction officers, 45 Transit Authority patrolmen and 25 Housing Authority policemen. In some departments, such as Police and Fire, some employes—those on limited service because of physical disabilities have already received notices.

In the third round of cuts, additional personnel reductions in these same departments have been ordered.

After the second round of layoffs was announced in December, Mayor Beame agreed to allow a month's reprieve to union leaders whose members belong to the New York City Employes Retirement System. During that time they were to attempt to persuade 860 elderly workers to leave before the mandatory retirement age of 65, so as to save the jobs of younger workers.

Beame to Ask 10% Realty Tax Hike



City's real estate tax has risen dramatically in the past decade. Proposals for 1976 would continue trend. Tax is based on $100 of assessed valuation.

By MARK LIEBERMAN

Anticipating a deficit of $1.6 billion, the Beame administration will ask the City Council to raise the city's real estate tax rate by a staggering 10% as part of its balancing act for the 1975-'76 city expense budget, City Hall officials said yesterday.

Even with this record boost, Mayor Beame said, the city faces a gap of $883.9 million for the budget which begins next July 1.

To close that gap, Beame said that he has asked for federal and state aid totaling nearly $1.3 billion, but he refused to speculate on how much of the request-package would be granted.

"The Picture . . . Today"

Beame revealed the property tax rate boost—74-cents to $8.00 per $100 of assessed valuation—as he detailed "the picture as we see it today" in preparing the 1975-76 budget.

If the new rate is okayed by the council—which set the realty tax rate by June 25—it would mean that a home assessed at $10,000 would be tare at $809, o $74 more than the curent $735 tax on the same home.

According to tht mayor, the increased realty tax levey would raise $350.3 milion in the coming fiscal year, most of which—$297 milion—would go to repay the city's long-term debt.

Beame did not propose any other tax increases as he sketched his gloomy fiscal picture, but he said that he would seek state legislation to extend the city's personal income tax and 8% sales tax. The tax was raised last year, through June 30, 1975, by the Legislature and the City Council 1.

The City Council has the power to impose a series of so-called nuisance taxes, one of which—the $15 annual auto use tax—was passed at the mayor's urging last year. Included in those taxes, which were authorized by the Legislature in 1971, is an extension of the sales tax to personal services such as dry-cleaning, haircutting and shoeshines.

Gov. Carey, in his state budget, proposed such an extention. Beame said yesterday that if Carey's proposal is approved, the city might follow suit.

According to the mayor's numbers, the city faces a 31,684,500,-000 gap as it prepares the 1975-'76 budget which can readly be trimmed to $883.9 million. The cuts in the gap include the increased property tax boost. Continued extension of the sales and income taxes, deferral of payments to the city's "rainy day" fund, the use of surplus pension funds and a continuation of state payments on motor vehicle and insurance taxes on city vehicles.

The mayor said the new city budget, which observers indicate would top $13 billion—up more than $1.5 billion from the currer $11.5 billion budget—would in clude $772.8 million in "new requirements" for welfare and medical assistance payments, hospital care, debt service, pensions, energy and collective bargaining.

He Gives the Figures

Beame said the actual cost of the new requirements would be $907.8 million but that he had directed the city's Budget Bureau to find additional economies to chop the costs by $135 million.

The new requirements, as well as the replacement of $412.3 million in one shot items used to prepare the 1974-75 budget and a $99.4 million carry-over of the current year's projected deficit, the mayor said, comprised the predicted budget gap.

Beame said he would probably seek a delay in submitting his 1975-76 budget formally to the council and Board of Estimate to determine what aid the city will receive from the state. The mayor, according to the City Charter, must submit his budget by April 15, but the council is empowered to grant him a delay of up to one month. Such a delay was granted last year. The budget must be adopted by June 21.

Beame Mentions an Alternative

The mayor said that if the one-shot items had not been used and the current year's budget had not been hit by inflation and recession, the city would have faced a "manageable" $145.5 million gap to be closed by additional state and federal aid.

Instead, Beame said, the $883.9

(Continued on page 100 col. 2)

(Continued from page 3)

million gap would have to be met through a new aid list which the mayor said he has presented to Carey and Vice President Rockefeller.

The package included $658.4 million in new aid from the state and $631.4 million in new federal aid.

In his state requests, the mayor asked Carey for additional education aid of $205 million to come from readjusting current state aid formulas to base education reimbursements on enrollment—not attendance—and take into account the special problems of cities in funding education.

Beame also asked for 50% of the proceeds of the 10-cent-a-gallon gasoline tax sought by Carey, but he cautioned that he was not endorsing the governor's tax scheme.

[illegible] would make a judgment, we want to know what we're going to get out of it and if any strings are attached," the mayor said.

Visions a New Way

On his federal aid, the mayor included revision of welfare allocation formulas, which he said would mean $100 milion for the city as well as the establishment of a method to allow the city to borrow at interest costs lower than the city pays to underwriting syndicates.

Beame said that if the federal and state aid is not granted, "we are faced with very unpleasant alternatives."

He said the alternatives involved cutting "vital services" such as education, police, fire or sanitation, or "to put an awesome burden of taxation on an already overtaxed public."

Beame said that he could not discount the possibility of municipal firings to tighten the budget belt, but he refused to speculate but he refused to speculate on specific dismissals.

"We can't tell you at this point about any layoffs," he said.

Daily News

2-16-75

Pg. 3

745a

NEW YORK TIMES 2-18-75 . . 28

City Hall Fantasia

746a

Mayor Beame's preliminary 1975-76 expense budget projections grimly confirm what has been evident to even the most casual students of New York City affairs for a long, long time—that this metropolis faces a fiscal crisis from which there can be no escape without drastic cuts in personnel and services and substantial increases in taxes.

Incredibly, there is little indication in the Mayor's budget presentation so far that Mr. Beame, once widely hailed as a tough fiscal expert, is prepared at last to grapple with these hard realities. His plan for closing an anticipated $1.68-billion deficit with the help of nearly $900 million in hypothetical new state and Federal aid leaves knowledgeable observers gasping in disbelief.

Although he claims "municipal economies" that will save $613.6 million over the two years ending June 30, 1976, the Mayor is proposing a $12-billion budget for the new fiscal year, up more than 8 per cent from this year's $11.1-billion spending level. That may be a reasonable reflection of the impact of inflation on municipal expenses, but a budget increase of that magnitude is clearly more than this debt-ridden city in the throes of acute recession can reasonably be asked to bear.

The persistent rise in a city payroll that has more than doubled in the last decade must be halted. That will require cutbacks far more drastic than the modest, and now largely aborted, layoffs announced by City Hall last year in its half-hearted effort to eliminate an estimated $420-million deficit from the current budget, or far more sweeping downward revisions of employe benefits than those agreed to so far by some municipal unions—or both.

The absolute necessity of achieving such economies is underscored by the staggering magnitude of the $1.68-billion revenue gap. Last year Mr. Beame managed to finesse a shortfall that was almost that large with the help of a galaxy of maneuvers, including rollovers and borrowing against anticipated revenues. Most of these devices cannot be repeated; in fact they have helped to intensify this year's problems, as some critics of last year's budget predicted.

Mayor Beame hopes to cover about half of his projected deficit through a 10 per cent boost in realty taxes, to $8.69 per $100 of assessed valuation—a painful, but under the circumstances minimal increase. Also, through higher anticipated revenues from existing sales and income taxes, increased fees, another postponement of payments into the "rainy day fund" and another raid on pension fund surplus. Even if these measures should add up to the $800 million in added income that is expected, which is doubtful, the new budget would remain $883 million in the red. To suggest that this gaping hole can be filled with new state and Federal largesse, given the current climate in Albany and Washington, is to believe in pie in the sky.

It is time the Mayor and his aides came down to earth and offered the citizens of New York a realistic budget, a budget that reflects the still substantial capacity of this city to support a reasonable level of city services, a budget that begins to reverse the long-term reliance on borrowing, and hocus-pocus, that have reduced the city to its present plight.

Exhibit 4

110 LIVINGSTON STREET
BROOKLYN, N.Y. 11201

748a

January 27, 1975

Bd.Ed.Mtg. 1/22/74
Cal.No. 28

Hon. Harrison J. Goldin
Comptroller, City of New York
726 Municipal Building
New York, N. Y. 10007

Dear Sir:

Enclosed for your information is a certified copy of resolutions which were adopted by the Board of Education on January 22, 1975, approving authorization for an agreement with Development Dimensions, Inc., for the purpose of developing job related examinations for three key supervisory positions in the New York City school system.

Very truly yours,

HAROLD SIEGEL
Secretary
Board of Education

HS:ms
Enc.

cc: Mr. Anker
Dr. Gifford
Mr. Arricale
Mr. Kratovil
Dr. Percell
Mr. C. Rosenberg
Dr. Rockowitz
Mr. Sousa
Mr. Stanley
Mr. Seymour Jaffe
Files

Development Dimensions, Inc.
250 Mt. Lebonan Boulevard
Pittsburgh, Pa. 15234

Agenda - May 22, 1972

AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH DEVELOPMENT DIMENSIONS, INC. FOR THE USE OF PROTOTYPE JOB-RELATED EXAMINATIONS AND VALIDATION OF THESE EXAMINATIONS FOR THREE SUPERVISORY POSITIONS WITHIN THE NEW YORK CITY SCHOOL SYSTEM

The following resolutions are presented for adoption:

RESOLVED, That the Chancellor be, and he is hereby authorized to enter into an agreement with Development Dimensions, Inc., 250 Mt. Lebanon Boulevard, Pittsburgh, Pennsylvania 15234, at a cost not to exceed $68,000 chargeable to function 03-11311, Code 419 to create and validate prototype examinations for three key supervisory positions in the New York City school system for the purpose of creating and validating job-related examinations for all supervisory positions in the school system; and be it further

RESOLVED, That the resolution of the Board of Education adopted on January 5, 1972 relating to the Code of Ethics and the Conflict of Interest is hereby incorporated.

E X P L A N A T I O N

The decision in the matter of Chance, et al. v. the Board of Education, the Board of Examiners, et al. requires that examinations for all supervisory licenses in the New York City school system be job-related. The Board of Education previously contracted with American Institutes of Research to provide prototype job analysis. The remaining requirement is to provide prototype examinations based on these prototype job analyses and to validate them. In order to fulfill this requirement, proposals were solicited from a number of consultant firms.

Development Dimensions, Inc. has been selected following a careful review of all the proposals submitted. This firm will provide (1) a prototype comprehensive assessment program for three supervisory positions in the school system in such a way as to constitute prototypes for future assessments (Step 1); (2) a program to reliably and validly evaluate persons holding these positions after selection by the appropriate hiring authority (Step 2) and (3) establish the validity of Steps 1 and 2 above.

The services to be performed under this agreement will help in the development of examinations by the Board of Examiners to fulfill its statutory responsibility to provide examinations for the licensing of supervisors on the basis of "merit and fitness" through the use of "open qualifying" examinations and to meet the constitutional requirement of non-discriminatory examinations.

Respectfully submitted,

IRVING ANKER, Chancellor

FRANK C. ARRICALE, II
Division of Personnel

ATTACHMENT

JOSEPH A. KRATOVIL
Division of Business and Administration

A true copy of resolution(s) adopted by the Board of Education on JAN 22 1973

Assistant Secretary, Board of Education

Exhibit 5

STATE OF NEW YORK

Cal. No. 72

9035-A

IN ASSEMBLY

(Prefiled)

January 7, 1976

Introduced by Mr. STAVISKY—Multi-Sponsored by—Mr. ABRAMSON, Miss AMATUCCI, Messrs. BARBARO, BIANCHI, BLUMENTHAL, BROWN, CINCOTTA, Mrs. CONNELLY, Messrs. CONNOR, COOPERMAN, CULHANE, DEARIE, DELLI BOVI, Del TORO, DeSALVIO, DiFALCO, ESPOSITO, EVE, FARRELL, FERRIS, FINK, FLACK, FLANAGAN, FORTUNE, FREMMING, FREY, Miss GADSON, Messrs. GAZZARA, GOTTFRIED, GRANNIS, GRIFFITH, HALEY, HARENBERG, HECHT, HINCHEY, HOCHBERG, HOCHBRUECKNER, IZARD, KOPPELL, KREMER, LANDES, LASHER, LEHNER, LEWIS, LISA, LOPRESTO, MARCHISELLI, McCABE, MEGA, G. W. MILLER, M. H. MILLER, MIRTO, MOLINARI, MONTANO, NICOLOSI, NINE, ORAZIO, PASSANNANTE, PESCE, S. POSNER, ROSS, Mrs. RUNYON, Messrs. SCHMIDT, SCHUMER, SERRANO, SHAROFF, SIEGEL, SILVERMAN, STEINGUT, STRELZIN, THORP, VANN, VELELLA, VIRGILIO, WALSH, WEPRIN, YEVOLI—read once and referred to the Committee on Education—reported from said committee with amendments, ordered reprinted as amended and placed on the order of second reading

AN ACT

to amend the education law, in relation to minimum appropriations under austerity conditions for city school district purposes in cities having a population of one million or more

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision five of section twenty-five hundred seventy-six of the education law, as amended by chapter five hundred seventy-six of the laws of nineteen hundred sixty-four, is hereby amended to read as follows:

5. In a city which had, according to the federal census of nineteen hundred forty, a population of one million or more such estimate shall be f[illegible]ith the mayor. If the total amount requested in such estimate shall be equivalent to or

EXPLANATION—Matter in *italics* is new, matter in brackets [ ] is old law to be omitted

less than [four and nine-tenths mills on every dollar of assessed valuation of the real property in such city liable to taxation] *an amount equal to the average proportion of the total expense budget of such city, as amended, appropriated for the purposes of the city school district of such city in the three fiscal years of such city immediately preceding the year for which said estimate is filed,* the city shall appropriate such amount. If the total amount contained in such estimate shall exceed the [said sum of four and nine-tenths mills on every dollar of assessed valuation of the real property in such city liable to taxation] *amount so computed,* such estimate shall, as to such excess, be subject to such consideration and such action by the board of estimate, the council, and the mayor as that taken upon departmental estimates submitted to the mayor. The city is authorized to make additional appropriations for educational purposes authorized by this chapter. The board of education shall administer all moneys appropriated or available for educational purposes in the city, subject to the provisions of law relating to the audit and payment of salaries and other claims by the comptroller.

§ 2. This act shall take effect immediately and shall be deemed to have been in full force and effect and retroactive from and after February first, nineteen hundred seventy-six.

Exhibit 6

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER
425 PARK AVENUE NEW YORK, N.Y. 10022

(212) PLAZA 9-8400

MILTON HANDLER
FREDERICK R LIVINGSTON
STANLEY D WARBERG
MILTON KUNEN
JOSEPH G CONNOLLY
SIDNEY J SILBERMAN
FREDERICK GELBERG
STANLEY D ROBINSON
FRED A FREUND
STUART MARKS
SAUL DUFF KRONOVET
SAUL E COHEN
B W NIMKIN
WILLIAM J ISAACSON
SHELDON OLIENSIS
FRED N FISHMAN
FREDERICK M BULLEN
GERALD FELLER
ARNOLD I GOLDBERG
NORMAN SINRICH
DONEN GLEICK
JOSHUA F GREENBERG
DAVID KLINGSBERG
MILTON J SCHUBIN
PETER M FISHBEIN
PAUL J CURRAN
SEYMOUR H CHALIF
LAWRENCE NEWMAN
PETER H WEIL
SEYMOUR GOLDSTEIN
DAVID GOLDBERG
MELVIN MICHAELSON
DONALD J CURRIE
BERTRAM A ABRAMS
JULIUS BERMAN
MICHAEL MALINA
JOEL B ZWEIBEL
MARTIN S SAIMAN
JOHN T DUNNE
JOHN A FRIEDMAN
SIDNEY KWESTEL
STANLEY ROSENBERG
JAY G STRUM
ALLEN KEZSBOM
GERALD SOBEL
RONALD L UNGER
ELIZABETH HEAD
HENRY K UMAN
S L WARHAFTIG
JEFFREY M EPSTEIN
MICHAEL D BLECHMAN
WILLIAM M BORCHARD
ALLAN H PEPPER
FREDRIC W YERMAN
ANDREA S CHRISTENSEN
STANLEY H FULD
HAROLD L FIERMAN
SPECIAL COUNSEL
JACOB SCHOLER
JAMES S HAYS
NATHANIEL M JACKSON
RICHARD C FLESCH
JAY O KRAMER
SIDNEY A DIAMOND
JAMES B HENRY
COUNSEL
3, VILLA ÉMILE-BERGERAT
92523 NEUILLY, PAR S, FRANCE
TEL 637 95 00
PAUL CORAT
JOSEPH DEJATTRE
(EUROPEAN COUNSEL)
CABLE ADDRESSES
RAYEMACLER NEW YORK
RAYEMACLER NEUILLY SEINE
TELEX NUMBERS
NEW YORK DOMESTIC 12692
NEW YORK INT'L 234830
PARIS: LEFEBVRE 62977F

March 18, 1976

Ms. Deborah Rothman
Corporation Counsel's Office
Municipal Building
New York, New York 10007

Re: Chance et al. v. Board of Examiners et al.

Dear Ms. Rothman:

At yesterday's meeting between the Board of Examiners and the Board of Education, it appeared that the Board of Education's two major concerns regarding implementation of the permanent plan for plenary supervisory examinations embodied in the Consent Judgment (the "Plan") were as follows:

1. The cost of conducting the Step 1 examinations at this time was of concern to the Board of Education in light of the present limited need for additional supervisory personnel in the three prototype positions; and

2. The performance evaluations required by Step 2 of the Plan appeared to the Board of Education to be a more appropriate function of the respective appointing authorities.

Following yesterday's meeting, the Board of Examiners met in a cooperative effort to develop an approach which could satisfy the Board of Education's two major concerns while at the same time fulfilling its own statutory and constitutional responsibilities. The Board of Examiners recognizes the concerns of the Board of Education and at the same time is committed to prompt implementation of the Plan for selection and licensing of supervisors.

Accordingly, the Board of Examiners has authorized me to make the following proposal for implementing the Judgment:

A. Job analyses of the three prototype supervisory positions should promptly be completed.

B. Thereafter, the Board of Examiners and Development Dimensions, Inc. should promptly develop the prototype examinations based on those job analyses. (As you know, the Board of Education is already obligated by contract to pay for the services of Development Dimensions, Inc. in helping to prepare the prototype examinations.)

C. Upon completion of the preparation of the three prototype examinations and their acceptance by the Board of Examiners, the interim system described in paragraph III C of the July 12, 1973 Consent Judgment would terminate.

D. In addition, the Board of Examiners is prepared to discuss with the other parties the elimination or substantial modification of the present Step 2 performance evaluations as now required by the Judgment, provided that a permanent license would be issued after the successful completion of the Step 1 examination.

The Board of Examiners' proposal would preserve the integrity of the merit system through development of examinations by the Board of Examiners as required by statute, while at the same time sparing the City the expense of administering examinations for supervisory personnel at this time. When such personnel are needed, the Board of Examiners would, at that time, conduct the Step 1 examinations in accordance with its statutory responsibilities.

I trust that you will convey this proposal to the members of the Board of Education and to the Chancellor and Deputy Chancellor and that I may hear from you with regard to it as soon as possible.

Very truly yours,

S.Z. Cohen

SZC:cv

BY HAND

Exhibit 7

THE BOARD OF EDUCATION
OF THE CITY SCHOOL DISTRICT OF NEW YORK
DIVISION OF PERSONNEL
65 COURT STREET
BROOKLYN, N.Y. 11201

FRANK C. ARRICALE, II
EXECUTIVE DIRECTOR

757a

January 29, 1976

PERSONNEL MEMORANDUM NO. 95

TO: Community School Board Chairpersons
Community Superintendents
Executive Directors
Heads of Bureau

FROM: Frank C. Arricale II
Executive Director

SUBJECT: FILLING OF PRINCIPALSHIPS

Effective immediately [illegible] vacancies for elementary and junior high school principalships [illegible]ding building principalships may not be filled until further [illegible]e because of excessing and possible lay off difficulties. This ban on filling of principalships is to take effect Monday, February 2, 1976.

Districts are urged to place assistant principals as interim acting principals so that the possibility of bumping and lay off of assistant principals can be reduced.

If you have any questions or concerns in this matter, please do not hesitate to call me or Jerry Olshaker, 596-6143. Please be assured that I will be happy to meet with you or your school boards to confer on this matter.

FCA:mt

Exhibit 8

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- -X

BOSTON M. CHANCE and LOUIS C. MERCADO, et al.,

70 Civ. 4141

Plaintiffs,

AFFIDAVIT

against

BOARD OF EXAMINERS, et al.

Defendants.

- -X

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

MURRY BERGTRAUM, being duly sworn, deposes and says:

1. I am President of the Board of Education of the City of New York, one of the defendants herein, and I submit this affidavit in opposition to plaintiffs' motion for a preliminary injunction.

2. The instant action, brought under 42 U.S.C. §§1981 and 1983 and their jurisdictional implementation, 28 U.S.C. §1343 (3), is for injunctive and declaratory relief. The two named plaintiffs are acting principals of elementary schools in New York City and holders of New York State principal's certificates. They do not hold a New York City license as elementary school principal which is necessary to obtain an appointment in the New York City school system. It is alleged in the complaint that one of the plaintiffs is Black and the other is Puerto Rican and it is further alleged that they bring this action on their own behalf and as a class action pursuant to Rule 23, F.R.C.P.

3. It is alleged that the defendant Board of Examiners will hold an examination for elementary school principal during the Autumn of 1970 and will promulgate an eligible list in the Spring of 1971 based on such examination (Complaint, par. 12).

4. Plaintiffs' claim that there is a low percentage of minority groups in New York City School System employed in supervisory capacities and that this is due to the testing procedures employed by the Board of Examiners. Allegedly, these procedures are biased against Blacks and Puerto Ricans. (Complaint, pars. 13, 14 and 15).

5. Plaintiffs further allege that the examination procedures employed by the defendant Board of Examiners are in violation of the United States Constitution and the Constitution and laws of the State of New York. It is further claimed that the Board of Education in violation of State Law has, in the past, left, and plans to leave, to the Board of Examiners exclusive discretion in the preparation, administration and grading of the forthcoming examination procedure for elementary school principal.

6. Plaintiffs request this Court to declare the present and planned examination procedures employed by the Board of Examiners to be unconstitutional. They seek to enjoin the defendants from using any examination for principal which has not been prepared in accordance with academic and professional standards established by the Board of Education.

7. Incident to this action is the present motion brought pursuant to Rule 65 FRCP seeking to preliminarily enjoin the defendants from:

(a) Administering or otherwise making use of any written and/or oral test, as a criterion for the New York City license of elementary school principal or for any other New York City public school system supervisory license, which has not been prepared and validated in accordance with the latest standards of professional psychological testing as accurately measuring the merit and fitness of candidates to perform the tasks of the position for which the test is being administered; and from

(b) administering or otherwise making use of an examination for principal which has not been prepared in accordance with, which does not strictly adhere to, and which in no way exceeds specific academic and professional standards for the license of principal established by the Board of Education pursuant to §2573 (10) of the New York Education Law, and for such other relief as the Court may deem just and proper.

8. The Board opposes plaintiffs' motion for preliminary injunction because as hereinafter set forth the granting of the interim relief sought would be disruptive to the entire school system of the City of New York.

9. The written portion of the examination for elementary school principal is scheduled for November 3, 1970. The eligibility requirements, the scope of the examination and other relevant data concerning the examination are set forth in an Examination Announcement, dated

eptember 11, 1970, a copy of which is annexed and marked Exhibit "A". It is the announced intention of the Board of Examiners and the office of Teacher Personnel of the Board of Education to conduct written, oral and medical tests in this examination at a site in Puerto Rico, as well as in New York City. This examination was announced on September 11, 1970. It was requested by the then Acting Superintendent of Schools, Mr. Irving Anker, with the recommendation that the examination be completed, if possible by February 1, 1971, or at the latest in the Spring of 1971.

10. In addition to the elementary school principal examination, many other supervisory examinations have been conducted, are being conducted, and are projected by the Board of Examiners. A report on the status of these examinations is annexed and marked Exhibit "B".

11. If plaintiffs' motion for a preliminary injunction is granted then all of these examinations will be disrupted. This result would be highly injurious to the New York City school system and the children attending its schools. It would deprive those schools of primary and intermediate leadership in supervision, in administration, curriculum direction, and relationship with parents and the community. Plaintiffs suggest that persons could be assigned in acting capacities to fill the void. However, it is self evident that an acting principal or other acting supervisor is not in a position to act with the continuity, authority and assurance attendant upon appointment to a position and the resulting tenure in office. The necessity to have fully tenured supervisors at all levels is reinforced by the extreme difficulties face by our schools, school

boards, students, parents, teachers and administrators in this transition period from a centralized school system to a decentralized one.

12. As a result of the liberalized pension benefits granted by the New York State Legislature in 1969 it is anticipated that more than 50% of the present supervisory staff will retire within the next four years with the bulk retiring within the next year or two. This is the reason for the request of the Acting Superintendent of Schools that the promulgation of a list of principals in day elementary schools be effected not later than the Spring of 1971. It would be an unnecessary hardship on the system to postpone the announced examination as well as other supervisory examinations when the need is so pressing now and will become much more acute within a short time.

13. The Board of Education's opposition to the plaintiffs' motion for a preliminary injunction is not based upon an evaluation of the merits of plaintiffs' overall case. The Board is of the opinion that the complaint raises issues of fact which should be determined at a trial. The Board's position is that the sole statutory responsibility for the administration of tests for supervisory personnel lies with the Board of Examiners.

14. New York Education Law §2569 provides in pertinent part:

> "It shall be the duty of the board [of examiners] to hold examinations whenever necessary, to examine all applicants who are required to be licensed ... The board [of examiners] shall periodically review the validity and reliability of examinations as well as examination procedures."

15. Since Education Law §2569 devolves the duty upon the Board of Examiners to administer all license examinations it is the position of the Board of Education that the Board of Examiners should satisfy the burden of defending their examination procedures.

16. In conclusion, in view of the great disruption to the New York City School System which would be caused by the granting of the preliminary relief plaintiffs seek, it is respectfully requested that their motion for a preliminary injunction be denied in all respects.

Sworn to before me this
26th day of October, 1970.

DANIEL W. KINGSTON
Notary Public, State of New York
No. 41-7473100 Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1972

MURRAY BERGTRAUM

MURRY BERGTRAUM

Exhibit 9 - Board of Examiners' Notice of Motion dated June 1, 1972, together with supporting affidavit of Murray Rockowitz (with exhibit), sworn to June 1, 1972.

(Printed at pp. 45a-63a)

Exhibit 10 - Letter dated March 10, 1975 from Leonard Bernikow to Judge Tyler.

(Printed at pp. 503a-504a)

Affidavit of Robert Christen, sworn to
May 12, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

BOSTON M. CHANCE, et al.,

Plaintiffs,

-against-

THE BOARD OF EXAMINERS AND THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

- -x

70 Civ. 4141

AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

ROBERT CHRISTEN, being duly sworn, deposes and says:

1) I am Vice President of the Board of Education of the City of New York and am fully familiar with the facts and circumstances of this case.

2) I submit this affidavit in opposition to the Board of Examiners' motion for an order "implementing the consent judgment."

3) The Board of Examiners' motion constitutes an attempt to deprive plaintiffs of the relief which the prior decisions herein have granted then, and to divert this Court's attention from the critical issues raised by the Board of Education's motion to modify the Plan incorporated in the Court's March, 1975 Order.

4) The Board of Examiner's motion is based on the allegation that the Board of Education has failed and refused to adopt the job analyses in accordance with the March, 1975 Order and Plan and that, accordingly, this Court should enter an order "authorizing and directing defendant Board of Examiners to prepare, at the expense of the Board of Education, job analyses."

5) In truth and in actuality, the Board of Education fully complied with the job analyses provisions of the March, 1975 Plan.

6) As is set forth in my affidavit dated April 12, 1976, (paragraph 12), under the terms of the original Plan, the first step in the implementation of a permanent licensing system required the Board of Education to develop prototypical job analyses for three supervisory positions.

7) The Board of Education, far from being recalcitrant in developing these job analyses, hired the American Institute for Research, at a cost of $36,699, to prepare job analyses.

8) In further compliance with the March, 1975 Plan, after the first three job analyses were completed, the Board of Education proceeded to consult with various educators and educational groups as to the merit of these analyses.

9) Because of the very strong criticisms as to the usefulness and validity of the Air analyses, the Board of Education concluded that it was their responsibility and duty to reject them. (See my affidavit dated April 12, 1976, submitted in support of Board of Education's motion to modify, paragraphs 14-24).

10) Clearly, the decision to reject the job analyses is within the lawful discretion of the Board of Education, as the March, 1975 Plan states that the job analyses will be subject to review by various educators and groups of educational experts, and that "the decision of the Board of Education ... shall be final."

11) Thus, it is clear that the Board of Education was in no way recalcitrant or remiss in preparing and reviewing the job analyses called for by the March, 1975 Plan.

12) In fact, as is hereinabove set forth and as is set forth in my affidavit of April 12, 1976, the undisputed facts demonstrate that the Board of Education fully complied with the job analyses requirements set forth in the March, 1975 Plan.

13) Moreover, it would be irresponsible and remiss of the Board of Education to adopt job analyses which, in their educational judgment, were unsound and unworkable.

14) The job analyses are not an end unto themselves, and have no intrinsic value. Their only purpose was to serve as a tool for the preparation of non-discriminatory job related examinations.

15) Once it became evident to the Board of Education, (as well as to the plaintiffs), that they were ill-suited to achieve this purpose, it was our duty to reject them.

16) In furtherance of our responsibility to expeditiously promulgate a permanent selection system, in addition to rejecting the job analyses, we moved to modify the 1975 Order and Plan on the grounds that any attempt to implement the original Plan would delay institution of a permanent system for many additional months and indeed, probably years, utilizing procedures that are costly, cumbersome and complicated, and offering no assurance that the resultant system would be non-discriminatory and job related. (This is fully set forth in my affidavit dated April 12, 1976, submitted in support of our motion to modify the March, 1975 Order and Plan.

17) It is almost incredible that the Board of Examiners is asking this Court to allow the Examiners to develop job analyses, at the expense of the Board of Education, on the ground that the Board of Education has refused to adopt job analyses, when the original Plan states that the decision of the Board of Education with regard to these job analyses shall be final, and when, the Board of Education, rather than the Board of Examiners was given the role of preparing job analyses under the original Plan in order to protect the plaintiffs, who, as the Board of Examiners seem to overlook, prevailed in this lawsuit.

WHEREFORE, on behalf of the Board of Education of the City of New York, I respectfully request that the Board of Examiner's motion be summarily dismissed.

Robert K. Christen
ROBERT CHRISTEN

Sworn to before me this
12th day of May, 1976
Florence D. Burke

FLORENCE D. BURKE
Notary Public, State of New York
No. 41-5523725
Qualified in Queens County
Commission Expires March 30, 1978

Affidavit of Paul L. Trachtenberg, sworn
to May 21, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOSTON M. CHANCE, et al., Plaintiffs, -against- THE BOARD OF EXAMINERS AND THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al., Defendants.	70 Civ. 4141 (M.P.) AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PAUL L. TRACTENBERG, being duly sworn, deposes and says:

1. I am an attorney, currently serving as Associate Professor of Law at Rutgers University Law School and Director of the Education Law Center in Newark, New Jersey and Philadelphia, Pennsylvania. For the past several years, my work in these and other capacities has focused on legal and educational issues entailed in administering public education systems. In addition to work in the area of school finance reform and an early involvement as special counsel to the New York City Board of Education in developing guidelines for decentralization, I have concentrated in the area of licensing and selection procedures for pedagogical personnel.

2. In 1971, I served as special counsel to the New York City Commission on Human Rights in extensive hearings on the selection of New York City public school teachers. The 700-page transcript of the testimony of over 130 witnesses and a "Summary of Testimony and Conclusions and Recommendations of the Commission," were published under the title Selection of Teachers and Supervisors in Urban School Systems, Tractenberg, ed. (Agathon Publication Services, Inc., New York, New York, 1972). I am the author of a book on licensing and selection procedures

based upon these hearings and additional research experience, entitled: Testing the Teacher: How Urban School Districts Select Their Teachers and Supervisors (Agathon Press, Inc. 1973). I have participated in many official and quasi-public deliberations on licensing and selection reform in school systems throughout the nation, among other things, as a member of the National Commission on Performance-Based Education, of which I am currently on the Executive Committee.

3. In 1973, I was retained by the plaintiffs in this lawsuit as consultant to assist them in negotiating a plan to replace the procedures for selecting New York City school supervisors which had been enjoined by the Court. I participated in a number of meetings with representatives of the parties and other expert consultants and designed and revised a proposal upon which plaintiffs' counsel relied during the negotiations.

4. I submit this affidavit in support of the defendant Board of Education's motion to modify the Plan contained in this Court's March 25, 1975 Order (hereinafter "Original Plan").

5. I was not personally involved either in the final negotiations on the substance of the Original Plan or the litigation which preceded its approval by the Court. Nor did I participate in negotiations with the Board of Education regarding the modified Plan for which it now seeks Court approval. However, I have read and am familiar with both versions of the Plan and the papers pertaining to the instant motion.

6. The modified Plan proposed by the Board of Education is close in concept to the first proposal for a new licensing procedure which I made to plaintiffs. Each has the same two components as its essential features:

a. An unassembled examination designed to exclude from provisional eligibility lists those persons who fail to meet training and experience requirements established by the Chancellor, and

b. Deferral of permanent licensure until after an appointing authority's decision, following an

initial period of employment and an on-the-job
773a
evaluation, that an individual should be reappointed.

7. My first proposal to the plaintiffs evolved in the context of a substantial consensus among many witnesses who appeared before the Human Rights Commission hearings, developing literature on teacher licensing reform, and the views of a number of members of the Task Force established by the parties in this case, regarding the difficulties with previous Board of Examiners' licensing procedures, and the fundamental changes which must characterize any new procedures. Among these groups, I found the following crucial points of agreement:

a. The primary function of a teacher licensing procedure was prediction of ability to perform on the job.

b. The Examiners' testing procedures, chiefly written examinations and oral interviews, were not predictive of on-the-job performance. Moreover, they excluded minorities, entailed too many delays to facilitate easy access to employment, and were costly and cumbersome.

c. The performance of a teacher or supervisor could best be predicted by an actual on-the-job performance evaluation.

d. Apart from compliance with New York State and City Board of Education experience and training requirements, the primary focus of any new licensing procedure should be on on-the-job evaluation.

The essential features of my original proposal to plaintiffs' counsel reflected these considerations. It appears from the Board of Education's papers on this motion, that they have propounded their similar modified Plan on the basis of the same considerations and conclusions developed or reinforced by recent experience in attempting to administer the Original Plan.

8. The Original Plan approved by the Court also contained central features of both my original proposal and the modified Plan--most notably the concept that initial licensure by the Board of Examiners would be provisional only, subject to successful on-the-job evaluation. Notwithstanding the similarities of the original Plan both to my earlier proposal and the modified Plan before the Court, the Original Plan differs from the two others in significant respects which, in my opinion, make the pending proposal of the Board of Education much more responsive to the needs for change in prior Board of Examiners' procedures. The most significant difference is the requirement in the Original Plan of an extensive battery of tests at Step 1, on the basis of which applicants can be disqualified. A threshold question raised by the complexity of these procedures and the extensive attention they receive in the Original Plan, is whether in implementation, the Original Plan could or would fulfill the parties' stated goals "to build in performance evaluation as a key component of the licensing process." I believe the answer is "no."

9. Viewed as a measure of determining minimum competency, the Step 1 process is a classic example of "overkill." The multiple test battery contemplated is extremely elaborate. I know of no precedent for its attempt to assure comprehensive pre-testing of all crucial competencies of personnel serving at the supervisory level. The development and validation, no less than administration of this test battery, will clearly require an extraordinary investment of time and resources by the Board of Examiners.

10. It seems unreasonable to expect that the Board of Examiners would go to the lengths required for Step 1 and then regard the results as only a preliminary and subsidiary phase of a two-step examination process, with Step 2 as the crucial phase. Other considerations confirm the assumption that the Board of Examiners, as creators of the substance of the Original

Plan, would not in practice give to Step 2 the same weight as Step 1.

11. The development and administration of appropriate on-the-job evaluation procedures will itself require careful and extensive attention. Historically, when faced with much less complex problems, the Board of Examiners has found itself with insufficient funds and manpower to do the research necessary for development or validation of needed new procedures. In the current financial emergency, it is inconceivable that the Board could give equivalent attention within a reasonable time frame to developing and administering valid, job-related procedures for both Step 1 and 2 as described in the Original Plan. Yet, the 26-page Original Plan, which was primarily developed by the Board of Examiners, makes clear where the priorities would lie by devoting 7 full pages to Step 1 (not including additional extensive discussions of job analyses and implementation procedures) and only 3 paragraphs to a "Description of Step 2 tests" (pp. 19-20). Surely this evinces an intent by the Board of Examiners that, despite the overriding thrust of the Plan expressed in its preamble, the preliminary phase of the licensing process will in fact overshadow the "key component" of on-the-job performance evaluation. Were there any doubt, it would be confirmed by the Examiners' proclaimed offer to the Board of Education to compromise the instant motion by eliminating the Step 2 evaluation process, and issuing a permanent license after Step 1 (Fitzgerald aff., Ex. "6").

12. There are two further considerations which raise serious questions as to the appropriateness of the Step 1 procedures in the Original Plan. First, it seems highly unrealistic to expect that adherence to them would furnish demonstrably job-related tests in the foreseeable future. As already noted, the effort they would entail to develop predictively valid, or even content valid, tests as the basis for excluding applicants for jobs at the school supervisory level, is unprecedented. The

widespread view that only performance evaluation can furnish a basis for valid testing of the range of essential pedagogical competencies gives cause to doubt whether the task can be accomplished at all. Even without the experience of recent unsatisfactory job analyses, one would have to presuppose a substantial period of trial and error, and accept as a substantial risk the possibility that non-discriminatory, valid tests, useable as an exclusionary device, might never ultimately emerge.

13. The wisdom of taking this risk of invalidity must, of course, be measured in terms of a variety of considerations, including the need to terminate this lawsuit and the inherent value of the procedures. The need to end this protracted case certainly weighs heavily against an unnecessarily elaborate procedure which cannot fully justify itself. And it seems clear that the extensive process contemplated by Step 1 cannot be justified even on its own merits, and certainly not as a preliminary step to test candidates for promotion from teaching to supervisory service, in a field where both the State and the City have already established substantial training and experience requirements.

14. A second consideration arguing strongly against the original Step 1 procedures is that in the face of their questionable utility, they would nevertheless continue--and almost certainly compound--two other widely criticized practical deficiencies of the old system--its costliness and its inordinately protracted character.

a. Costliness - The expense of prior written tests was widely criticized and well-documented. Based on the Board of Examiners' annual budget and its then chairman's estimate of the annual number of written examinations administered, I concluded in 1973 that the cost of the old examinations developed without job analyses or validation procedures, was $70 per person. The diversified battery of situational, performance and written and oral tests contemplated

by the Original Plan for new supervisory licensing procedures (which now must be validated and also submitted for review to plaintiffs and the Court) will certainly be far more costly to develop. They will also be more individualized and thus clearly more costly to administer. Viewing this elaborate process in the light of my cost analysis of the simpler procedures, the Board of Education's estimate that Step 1 alone of the new process will cost at least $150 per person, (Christen aff. para. 31), seems entirely justified.

b. Delay. Another reiterated objection to the old tests was that delays in promulgating eligible lists discouraged many applicants from applying and caused some who had applied to accept jobs elsewhere. Clearly, development of tests under the Original Plan in this case will be far more protracted, with inherent complexities compounded by the safeguards necessary to assure that those procedures are non-discriminatory and job-related. Administration will also be attenuated. Thus, despite the Plan's provisions for increasing the frequency of examinations, thereby hopefully to "maximize the opportunity for qualified minority applicants to compete for jobs" (Original Plan, p. 16), it seems clear that if it is adhered to history will repeat itself in a pattern of substantial delays.

15. Furthermore, the Board of Examiners' exclusive control over on-the-job evaluations under the Original Plan, would compound all the problems engendered by the complexity of Step 1. The description of Step 2, in a Plan originally drafted by the Examiners, reflects the Examiners' inexperience with such evaluations and disinterest in the subject. This is in marked contrast to the experience of the Board of Education,

the Chancellor and each of the City's community school boards, 778a which are required by state law to evaluate personnel on the job as a precondition to annual retention and dismissal decisions and determinations as to whether they shall be granted tenure.

16. For the reasons set forth above, I believe the deficiencies in the Original Plan would clearly justify its modification even absent the compelling new circumstances presented by the inadequacy of the prototype job analyses, the City's current financial crisis and the limited numbers of vacancies in positions anticipated for the foreseeable future. In contrast, the proposed modified Plan is an appropriate solution to the need for a simplified, less costly and more feasible Plan, which can nevertheless address, in a realistic fashion, the school system's needs and the State's constitutional and legislative requirements for a licensing system based on merit and fitness. The modified Plan incorporates those procedures, but only those procedures--assessment of the record and on-the-job evaluation--which experience teaches have a realistic probability both of assisting materially in the licensing process and withstanding constitutional challenge. It distributes responsibility for handling them among the Board of Education (and/or community boards) and the Board of Examiners in the manner most consonant with their efficient and effective discharge as well as in accordance with their traditional roles as recognized in practice and by virtue of state law. For instance, the functions of job definition--including prescription of minimum licensing requirements and on-the-job evaluation criteria--are properly retained in the Board of Education.[1] Under the proposed modified Plan, the Examiners

[1] I note with disbelief the Board of Examiners' contention in support of its motion to assume the job analysis function that a document it arbitrarily styles as a prototype of the Original Plan assigned the function to them, and that its subsequent reassignment to the Board of Education in the Original Plan was on the one hand a sort of afterthought by plaintiffs, and on the other a concession by the Examiners to the Board of Education. My first proposal to plaintiffs' counsel clearly indicated that to the extent job analyses (i.e., definition of duties) were required, they would be performed by the Board of Education. This was not only one of the very first items on which members of the joint Task Force had agreed, but the long-standing practice of both Boards, in apparent acknowledgment of State law, pursuant to which, in theory at least, the Examiners designed tests to meet Board of Education job requirements.

perform their traditional function of making the determination as to whether or not candidates' alleged experience and training are as stated and, if so, whether or not they meet the requirements established by the Chancellor. The Board of Education and the community school boards, to which state law has recently reassigned some of both the Board of Education's and the Board of Examiners' traditional authority with respect to employee selection and evaluation, are formally linked to the on-the-job evaluations, which observers agree uniquely require local input.

In sum, the Original Plan is risky, cumbersome and expensive to a degree totally unjustified in view of its limited utility and its potential for further litigation and protracted delay. The new Plan, shorn of the superfluous features which create high risk of invalidity in the original, would maximize the possibility that a valid, useful and workable new system may finally emerge.

PAUL L. TRACTENBERG

Sworn to before me this
21st day of May, 1976

Affidavit of Murray Rockowitz, plus exhibit,
sworn to May 21, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

BOSTON M. CHANCE, et al., :

Plaintiffs, :

-against- :

THE BOARD OF EXAMINERS AND THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al., :

Defendants. :

- - - - - - - - - - - - - - - - - - - x

70 Civ. 4141 (M.P.)

REPLY AFFIDAVIT

LAW DEPARTMENT CITY OF NEW YORK OFFICE OF CORP. COUNSEL 76 MAR 24 P 3:33

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MURRAY ROCKOWITZ, being duly sworn, deposes and says:

1. I am a member of the Board of Examiners and submit this affidavit in reply to the answering affidavit of Robert Christen, sworn to May 12, 1976 (the "Christen Affidavit") and in further support of the Board of Examiners' motion to require immediate implementation of the Consent Judgment.

The Board of Education's Failure to Act.

2. Contrary to the Christen Affidavit, the factual record on this motion clearly demonstrates that the Board of Education has been dragging its feet in carrying out its responsibilities with respect to the preparation of job analyses under the Consent Judgment; that it was only after the Board of Examiners brought this matter to the attention of this Court at the pre-motion conference on January 22, 1976 that the Board of Education took any action

with respect to the AIR prototype job analyses; and that the Board of Education is still engaging in delaying tactics. Thus, the record shows that:

A. This Court approved the permanent Plan for plenary examinations on January 14, 1975 and by order entered March 25, 1975, that Plan was formally made a part of the Consent Judgment. It required the Board of Education to prepare job analyses and indicated that the Board had designated AIR to assist it in preparing the three prototype analyses.

B. "In the Spring of 1975" (see the Board of Education's Memorandum on this motion, p. 5), AIR turned over its three prototype job analyses to the Board of Education.

C. In July, August and September 1975 the Board of Education received advisory opinions from the six reviewers which it had designated pursuant to the Plan (see Exhibit 4 to Mr. Christen's affidavit sworn to April 12, 1976; and Exhibit 2 to the Board of Examiners' affidavits in opposition to the motion to modify the Consent Judgment). Also in September 1975, the plaintiffs submitted their views about the AIR prototype job analyses to the Board of Education (see Exhibit 1 to the affidavit of Jeanne R. Silver, submitted with respect to the motion to modify, sworn to April 26, 1976).

D. On or about September 11, 1975, the Board of Education's Secretary delivered copies of the AIR prototype job analyses as well as copies of the recommendations of each of the six reviewers to each member of the Board of

Education so that that Board could act on the analyses. (See Exhibit C to the Board of Examiners' motion to implement the Consent Judgment.) 783a

E. Thereafter, despite the Board of Examiners' efforts to obtain action by the Board of Education with regard to the AIR analyses (see the Rubin Affidavit submitted on this motion, para. 3E and F), the Board of Education took no action whatsoever.

F. Because of the Board of Education's failure to act, the Board of Examiners' counsel requested a pre-motion conference with this Court and that conference was held on January 22, 1976. As is shown in the Cohen Affidavit submitted on this motion, para. 3, the Board of Education's position at the conference was that it needed further time to carry out its responsibilities under the Consent Judgment and that, in fact, it intended to abide by that Judgment. Based upon those representations from the Board of Education's counsel, this Court adjourned the pre-motion conference for six weeks until March 4, 1976.

G. At that conference on March 4, the Board of Education's counsel indicated that the AIR analyses had been rejected by the Board as inadequate and announced that the Board of Education, rather than remedying the supposed defects in the analyses, wished to move to modify the Consent Judgment to obviate the need for such analyses under the permanent Plan.* (See Cohen affidavit on this motion, para. 4.)

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* Other than in the Board of Education's motion papers, the Board of Examiners has never been informed of any official action by the Board of Education rejecting the AIR job analyses. Moreover, the most that is stated in

3. Thus, to date, the Board of Education has still not fulfilled its responsibilites under the Consent Judgment with respect to job analyses. Rather, it has sought to justify its default and to divert attention from it. It seems clear that the Board of Education has not been acting expeditiously and in good faith since, even if the AIR job analyses are inadequate, the Board of Education has had possession of them for about a year. It has had more than ample time to remedy any defects in the analyses or, if need be, to redo the analyses entirely.

The Relief Requested On This Motion.

4. I have read the affidavit of Saul Z. Cohen, sworn to May 5, 1976, which was submitted by the Board of Examiners in opposition to the motion to modify the Consent Judgment. That affidavit, particularly paragraph 9, fully and accurately sets forth the circumstances under which the Board of Education was given the responsibility to prepare job analyses under the permanent Plan for plenary examinations. The statements in the memoranda submitted by plaintiffs and the Board of Education on this motion that plaintiffs insisted that the Board of Education prepare job analyses as a "protection" or "safeguard" for plaintiffs is wholly inaccurate. In fact, as is more fully shown in Mr. Cohen's affidavit, plaintiffs had initially agreed that

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Mr. Christen's affidavits on the motions before this Court is that the AIR job analyses "had to be rejected" (see para. 11a of Mr. Christen's affidavit, sworn to April 12, 1976). Those affidavits do not even state when the analyses were rejected by the Board of Education, and the Board's memorandum in opposition to this motion, p. 6, only says that the Board ". . . rejected them on or about March 3, 1976" (Emphasis added). (March 3 was the day before the second pre-motion conference with this Court.)

the Board of Examiners would prepare job analyses and the only "safeguard" which plaintiffs insisted upon was that the prototype job analyses be prepared for the Examiners by independent consultants. It was the Board of Education's suggestion that it be responsible for job analyses under the permanent Plan and the other parties agreed to that suggestion.

5. The Board of Examiners' present motion seeks to have independent consultants, Development Dimensions, Inc., which are recognized testing experts,* prepare the three prototype analyses or remedy whatever defects are presently contained in the AIR analyses. Thus, plaintiffs' interest in having an independent consultant prepare the prototype analyses is preserved under the Board of Examiners' motion.

Murray Rockowitz

Sworn to before me this
day of May, 1976.

Notary Public

MILTON WEINSTEIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 60-9503400
Qualified in Westchester County
~~Cert. filed in Rockland County~~
Term expires March 30, 19__

* Annexed hereto as Exhibit A is a short description of Development Dimensions and a list of some of its clients, both public and private, for which it has worked in the past.

INFORMATION ABOUT DEVELOPMENT DIMENSIONS, INC.

Development Dimensions, Inc. is a consulting firm which specializes in the design and development of managerial identification and selection systems. Development Dimensions, Inc. personnel are industrial and educational psychologists who are known for their ability to apply the rigor and discipline of their fields in the solution of practical problems which exist in on-going organizations in business, industry, government, and education. Best known for its leadership in pushing forward the frontiers of the assessment center method (each year over 20,000 people in 500 large and small organizations are assessed using Development Dimensions exercises), Development Dimensions, Inc. prides itself in the blending of universally accepted traditional techniques with applications of contemporary, yet experimentally proven, concepts. Dr. Byham, the President of the company has published 9 articles, edited 7 books and written one book on various aspects of the selection process. In addition, he has consulted with over 100 companies on issues dealing with selection.

All selection systems designed by Development Dimensions, Inc. are built around a thorough and detailed study of the content and skill requirements of the job or job level for which the selection system is designed. All of the work in the hundreds of organizations for which Development Dimensions, Inc. has custom-designed, developed, and installed selection systems has been built on the qualitative and quantitative results of a thorough, detailed, and relevant job analysis. This job analysis usually accounts for the majority of time spent in the design of a selection system.

Development Dimensions, Inc. uses a combination of many job analysis techniques but places particular emphasis on the "critical incident" method. This technique has been the psychological literature for almost 20 years and its effectiveness is universally accepted by practicing industrial psychologists. Based on incidents of actual behavior, the "critical incident" method primarily focuses on behavior which is especially noteworthy, or especially undesireable.

Development Dimensions, Inc. usually collects critical incident data by conducting intensive interviews with a representative random sample of managers who supervise the job or job levels in question. Based on these data, plus all other information concerning the critical aspects of performance on the job or job level in question (general interview information, review of job descriptions, etc.), Development Dimensions, Inc. designs a job analysis questionnaire which is administered to either a large sample of the managers sampled above, or in some cases, the complete population.

Only after behavioral data collected from all sources is reviewed and analyzed, are the summary elements, or dimensions, of job success identified. As mentioned previously this method of job analysis is a central building block on which all selection systems designed by Development Dimensions, Inc. is based. The effectiveness of both the method and the personnel who apply it are time-tested and proven in a wide variety of organizational types and settings.

A partial list of Development Dimensions, Inc. clients is attached.

exhibit A

A PARTIAL LISTING OF DEVELOPMENT DIMENSIONS' CLIENTS

Agway, Inc.
Aluminum Company of Canada
American Hospital Supply Corporation
Anglo American Corporation of South Africa Ltd.
Armco Steel Corporation
Baylor University
Bendix Corporation
Blue Cross Association
Blue Cross & Blue Shield of Illinois
British Columbia Hydro & Power Authority
British Columbia Telephone Company
Campbell Ewald Company
Central Telephone & Utilities Corporation
Chevrolet Motor Division
Ciba-Geigy Corporation
Clark Equipment
Consolidated Edison of New York, Inc.
Construction Safety Association
Consumers Power Company
Continental Telephone Service Corporation
Control Data Corporation
Dorsey Laboratories
Edgars, Ltd.
First & Merchants National Bank
Foodplex, Inc.
Ford Marketing Corporation
Forty Plus of Canada
General Cable Corporation
Gino's Inc.
Harrah's Tahoe
Harris Semi Conductor
Heil Company
Hoffman-LaRoche, Inc.
Huyck Corporation
International Association of Chiefs of Police, Inc.
Interstate Paper Corporation
S. C. Johnson & Son
Kendall Company
Knight Newspapers, Inc.
Eli Lilly (Germany)
Lincoln First Bank of Rochester
Lincoln Public Schools (Nebraska)
Mallinckrodt Chemicals
Manitoba, Province of
Maryland National Bank
McGraw-Hill Book Company
F. W. Means & Company
Merrill Lynch, Pierce, Fenner & Smith, Inc.
[illegible]ity, Inc.
[illegible]la, Inc.
National Cash Register Company
Nationwide Insurance Company
Northern Electric Company Ltd.
Northern Illinois Gas Company
Olin/Ecusta Paper Division
Ortho Diagnostics
Ortho Pharmaceutical Corporation
Owens-Illinois
Panhandle Area Educational Cooperative
Procter & Gamble Company
Prudential Life Insurance Company of America
Qantas Airways, Ltd.
Questor Corporation
Rohm & Haas Company
Schering Corporation
Shell Oil Company
Smith Kline & French Laboratories
South African Mutual Life Assurance Society
Stanford University
Steinberg's Ltd.
Steelcase, Inc.
Supermarkets Interstate
Union Planters National Bank
United States Agricultural Marketing Service
United States Army
United States Civil Service Commission
United States Office of the Management & Budget
United States Social Security Administration
Upjohn Company
USM Corporation
Wickes Corporation
Wisconsin, State of
York Graphics Services, Inc.

Letter dated May 26, 1976, from Saul Z. Cohen
to Judge Pollack

FILE

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER
425 PARK AVENUE NEW YORK, N.Y. 10022

(212) PLAZA 9-8400

MILTON ...
FRE...
STANLE... WARD
MILTON KUNEN
JOSEPH G. CONNOLLY
SIDNEY J. SILBERMAN
FREDERICK GOLBERG
STANLEY D. ROBINSON
FRED A. FREUND
STUART MARKS
SAUL DEFF KRONOVET
SAUL Z. COHEN
B. W. NIMAN
WILLIAM J. ISAACSON
SHELDON OLIENSIS
FRED N. FISHMAN
FREDERICK P. BULLEN
GERALD FELLER
ARNOLD I. GOLDBERG
NORMAN S. ...RICH
GOREN GLE...
JOSHUA F. GREENBERG
DAVID KLINGSBERG
MILTON J. SCHUBIN
PETER M. FISHBEIN
PAUL J. CURRAN
SEYMOUR H. CHALIF
LAWRENCE NEWMAN

PETER H. WEIL
SEYMOUR GOLDSTEIN
DAVID GOLDBERG
MELVIN MICHAELSON
DONALD J. CURRIE
BERTRAM A. ABRAMS
JULIUS DERMAN
MICHAEL MALINA
JOEL B. ZWEIBEL
MARTIN S. SAINAN
JOHN T. DUNNE
JOHN A. FRIEDMAN
SIDNEY KWESTEL
STANLEY ROSENBERG
JAY G. STRUM
ALLEN KEZSBOM
GERALD SOBEL
RONALD L. UNGER
ELIZABETH HEAD
HENRY K. UMAN
S. L. WARHAFTIG
JEFFREY M. EPSTEIN
MICHAEL D. BLECHMAN
WILLIAM M. BORCHARD
A...AN M. PEPPER
FREDRIC W. YERMAN
ANDREA S. CHRISTENSEN

STANLEY H. FULD
HAROLD L. FIERMAN
SPECIAL COUNSEL
JACOB SCHOLER
JAMES S. HAYS
NATHAN EL...M JACKSON
RICHARD C. FLEDER
JAY D. KRAMER
SIDNEY A. DIAMOND
JAMES B. HEARY
COUNSEL
3, VILLA ÉMILE-BERGERAT
92523 NEUILLY-SUR-SEINE, FRANCE
TEL. 637 95 00
PAUL CORAT
JOSEPH DELATTRE
(EUROPEAN COUNSEL)

CABLE ADDRESSES
KAYEMACLER NEW YORK
KAYEMACLER NEUILLY-SEINE
TELEX NUMBERS
NEW YORK DOMESTIC 12692
NEW YORK INT'L. 234493
PARIS: LEFEBVRE 62977

May 26, 1976

BY HAND

Honorable Milton Pollack
United States District Judge
U.S. Courthouse
Foley Square
New York, New York

Re: Chance v. Board of Examiners, et al.
(70 Civ. 4141)

Dear Judge Pollack:

As of this morning, we have not yet received defendant Board of Education's reply papers on its motion to modify the Consent Judgment, despite the express agreement among counsel that those papers would be served no later than Friday, May 21, 1976 (see the letter agreement between the parties dated April 19, 1976). In the event that the Board of Education raises new matters when it serves its reply papers, we respectfully request the opportunity to submit a written response following the argument of the motion on Tuesday, June 1, 1976.

We have received plaintiffs' "reply" papers on the motion to modify. Since those papers are replete with misleading arguments, we feel compelled to briefly respond to a few of those contentions.

1. Plaintiffs discuss this case as if it had not been resolved in 1973 by way of a Consent Judgment and as if all parties had not agreed in 1974 upon a

permanent Plan for a new system of plenary supervisory examinations.* Plaintiffs would have this Court ignore the hundreds of hours spent by all parties working to develop what all parties agreed in 1974 and 1975 was a proper and constitutional Plan for new examinations. Moreover, they would have this Court ignore the fact that under New York law the Board of Examiners has the sole responsibility for developing examinations and for determining the proper content of those examinations. It is particularly shocking to read plaintiffs' argument that the Plan embodied in the Consent Judgment is not "simple" enough since any complexity in the Plan came about because of concessions made by the Board of Examiners to plaintiffs' demands during negotiations.

2. Despite an extended demonstration both in the Fitzgerald Affidavit, paras. 9-16, and in the Examiners' Memorandum, especially pp. 35-43, that the Board of Education's proposal for the selection of supervisors would vitiate the requirements of New York law, be inconsistent with proper personnel practices, not be job related and give rise to subjective decisions and inequities, Plaintiffs' Reply Memorandum, pp. 14-15, baldly suggests that that proposal would be consonant with the requirements of law and that the Examiners have never argued that it would be "unsound" or "otherwise improper."

3. Plaintiffs' Reply Memorandum, pp. 13-14, cites Altman v. Lang and Young v. Trussel as supposedly indicating that the Board of Education's proposal would be consonant with New York law. But those cases have no bearing as to the second part of the Board of Education's proposal and, even as to the first part, they are totally inapposite here. First, they did not involve an interpretation of the requirements of the New York Education

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* The March 25, 1975 Order specifically found that ". . . all parties herein agreed upon a Plan for such plenary examinations . . . and they submitted the Plan to this court on May 24, 1974; . . . ." See Board of Examiners' Memorandum dated May 6, 1976 In Opposition to this motion to modify the Consent Judgment (the "Examiners' Memorandum"), pp. 9-14.

Honorable Milton Pollack May 26, 1976

Law. Second, they involved evaluation procedures selected by the Department of Civil Service which was empowered by state law to select appropriate procedures, whereas here the statutory testing agency, the Board of Examiners, vigorously opposes the use of the type of evaluation procedure in question. In the Nyquist case (see Examiners' Memorandum, pp. 37-39), the New York Court of Appeals rejected an attempt to by-pass the proper testing agency in licensing a supervisor. Third, those cases involve single attempts to select persons for a single position, whereas in the instant case the permanent Plan for plenary supervisory examinations is intended to serve as a framework for all supervisory examinations in the New York City school system for years to come.

4. Finally, Plaintiffs' Reply Memorandum, p. 2 and n. 1, misleadingly argues that the Examiners' Memorandum is inconsistent. This contention is totally baseless. The Examiners' Memorandum consistently argues, on a number of grounds -- e.g., principles governing modification of consent judgments and timeliness requirements of Rule 60, Fed. R. Civ. P., -- that the Board of Education's motion is barred because each of the reasons advanced by both that Board and by plaintiffs to support the motion could have been advanced years ago prior to the settlement of this case and the agreement on the terms of the Plan. Obviously, the concept of finality would have no meaning if such contentions could receive serious attention at this late date.

Respectfully yours,

S.Z. Cohen

SZC:ak

cc: Elizabeth DuBois, Esq.
Deborah Rothman, Esq.

Affidavits of Robert Christen (plus exhibits), sworn to May 27, 1976, and Robert Owens, sworn to May 26, 1976

LEGAL FILE

[pagination continues on page 795a]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

BOSTON M. CHANCE, LOUIS C. MERCADO et al.,

Plaintiffs

-against-

70 Civ. 4141

THE BOARD OF EXAMINERS et al.,

Defendants

----------x

AFFIDAVITS OF DR. ROBERT CHRISTEN AND DR. ROBERT OWENS IN REPLY TO BOARD OF EXAMINER'S OPPOSITION TO BOARD OF EDUCATION'S MOTION.

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants
Municipal Building
New York, New York 10007
(212) 566-2186/2192

DEBORAH ROTHMAN
Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOSTON M. CHANCE, et al.,

Plaintiffs,

-against-

THE BOARD OF EXAMINERS AND THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

70 Civ. 4141 (M.P.)

REPLY AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROBERT CHRISTEN, being duly sworn, deposes and says:

(1) I am Vice President of the Board of Education of the City of New York and am fully familiar with all the facts and circumstances herein.

2. I submit this affidavit in reply to the opposition affidavits of Ethel Fitzgerald and Saul Cohen, dated May 5, 1976, and in support of the Board of Education's motion to modify this Court's Order of March 25, 1975, and the Plan referred to therein.

3. It is the purpose of the Board of Education's motion, which is fully supported by the plaintiffs, the prevailing party herein, to immediately implement a non-discriminatory and job related permanent supervisory selection system, which is realistic and responsive to current needs of the City School District, which will effectuate the purpose of prior decrees herein by providing more effective relief to the plaintiffs, and to bring an end to this six years of litigation in the most expeditious and economic manner feasible.

4. It is the firm belief and staunch conviction of both the Board of Education and the plaintiffs that the original plan must be modified because recent experience since March 1975 has demonstrated that it has little likelihood of achieving its primary goal, which was to develop a nondiscriminatory and job related permanent supervisory selection system.

5. The essential basis for judging any plan is how well it can effectuate this primary goal, not how well it coincides with the interests of the Board of Examiners in expanding their function by involving them in the development of a highly structured examination process.

6. Since the original plan has little relevance to current needs of the City school system, and recent experience since March of 1975 has demonstrated that it is unlikely that it will even produce a valid and constitutional selection system, which will be adaptable to future needs of the City school system (see e.g. affidavits of Paul Trachtenberg dated May 21, 1976, and Robert owens dated May 26, 1976), there is little justification for proceeding further with the implementation of this costly and cumbersome "high-risk" Plan.

7. Professor Trachtenberg's affidavit and Professor Owen's affidavit fully support the Board of Education's contention that the proposed modified plan would more effectively implement the goal of creating a non-discriminatory job related supervisory selection system than the original plan, and also support the proposition that the modified plan is more responsive to the rapidly changing conditions in the New York City school system than the original Plan.

8. The modified plan proposed by the Board of Education, with the full support of the plaintiffs, fully meets the requirements of State law, even though it narrows the range of choice of the Board of Examiners.

9. The Board of Examiner's argument that under State law the Board of Education may have no say at all regarding the content of supervisory examinations (paragraphs "10" of Fitzgerald Affidavit) is sheer nonsense.

10. Under State Law, it is the Board of Education's duty to appoint principals, assistant principals, and all other supervisors, "and to determine their duties," as well as to determine the "qualifications required for each kind of grade in license". (N.Y. Ed. Law 2573.10) (emphasis added).

11. Thus, it is clear that under State law the Board of Education is required to tell the Board of Examiners what kinds of qualities it is to test for.

12. In order to tell the Examiners "what kinds of qualities to test for," the Board of Education must have some input into the content of the examinations prepared by the Board of Examiners.

13. After the Board of Education defines the qualifications and duties of a supervisor, under the Education Law it is then the duty of the Board of Examiners to:

> "hold examinations whenever necessary, to examine all applicants who are required to be licensed or to have their names placed upon eligible lists for appointment in the schools ..., and to prepare all necessary eligible lists... It shall perform such other duties as the Board of Education and the Chancellor ... may require."

N.Y. Ed Law 2569-2a. See also N.Y. Ed Law 2590-j

798a 14. Thus, under the statutory scheme, the Board of Education defines the qualifications for supervisory positions and the Board of Examiners measures them.

15. The proposed modified final plan follows this scheme to the letter:

> "The Board of Examiners will determine candidates' compliance with training, experience and other requirements established by the Chancellor pursuant to State Law. This examination, an unassembled examination to be developed and administered by the Board of Examiners, will consist of a review, verification and analysis of record. The Board of Examiners will establish procedures by which candidates may document their training and experience. On the basis of an evaluation of this material, as well as any other inquiries appropriate to verify transcripts and resumes, the Board of Examiners will determine which applicants are qualified and therefore eligible for placement on an eligible list and for provisional licensure.
>
> Candidates will also be required to participate in a written essay examination developed by the Board of Examiners and administered under proctored examination conditions by the Board of Examiners. This essay will be designed to demonstrate skills in written expression about matters relating to the position for which application is made, and the Board of Examiners will evaluate and comment on the candidates' written communication skills." Proposed Plan for Licensing and Selecting Supervisors in the New York City School System, para. 1A."

16. Also, in addition to the basic division of responsibilities between the Board of Education and the Board of Examiners, set out in the Education Law, there are further state statutory duties and responsibilities given solely to the Board of Education which require the Board of Education to have some input into the content of supervisory examinations.

17. Under State Law it is the Board of Education that/is required to "determine all policies of the city district," i.e., the City School District of the City of New York (§2590 a(1) of Education Law), and to prepare and submit to the City the budget for the City School District (§2590-i of Education Law)

18. Clearly, in furtherance of its broad policy and budgetary powers and responsibilities, and its ultimate responsibility for the education of the children of this City, the Board of Education cannot permit the Board of Examiners to prepare examinations in a vacuum, isolated from Board of Education policy and budgetary responsibilities.

19. One example of the policy making responsibilities of the Board of Education which must affect the content of supervisory examinations is the Board of Education's responsibility to assure that the school system is responsive to the rapidly changing needs of the City School District. (One of the reasons for this six years of litigation is that the examinations prepared by the Board of Examiners were not responsive to these needs.)

20. As of October 1975, 67% of the over one million pupils in the City's public schools were Black and Hispanic, while 33% were white (including oriental).

21. Over the past fifteen years the white population in New York City has declined steadily. The white population in the public schools has declined more severely; it now constitutes a minority of only a third of the overall school population and is projected to become a smaller minority in the ensuing years.

22. With this constant and rapid change in the ethnicity of the pupil population in the City school system, there have been drastic changes in the conditions, problems and duties facing a school supervisor.

23. It is the responsibility of the Board of Education to assure that the school system, including its supervisory personnel, is responsive to these changing conditions.

24. Since it is the belief of the Board of Education, partially as a result of our experience with the job analyses, (see affidavit of Dr. Robert Owens submitted herewith), that the examinations contemplated by the original Plan herein would not be adaptable to the rapidly changing needs of the City School District, it is clearly the Board of Education's responsibility to petition this Court for a Plan that can produce a flexible and adaptable supervisory selection system.

25. Thus, for all of the reasons hereinabove set forth, and set forth in the accompanying memorandum of law, we submit that our proposed modified plan fully meets the requirements of State Law with respect to the division of statutory responsibilities between the Board of Education and the Board of Examiners.

26. In support of her proposition that the Board of Education's proposal encroaches upon the Board of Examiner's function of preparing objective examinations, Ethel Fitzgerald cites, inter alia, In the Matter of the Jurisdiction of the Board of Examiners of the City of New York by the President of the Board of Education, 25 State Department Reports 275 (NYS Education Dept., February 9, 1921.

27. As will be more fully set forth in an accompanying memorandum of law, this decision actually affirms the Board of Education's position that our proposal is fully valid under State law. The decision clearly sets forth the statutory division of responsibilities between the Board of Education and the Board of Examiners as requiring the Board of Education to define the qualifications for a position, and the Board of Examiners to test and measure these qualifications. Our proposal, as is set forth above, follows this scheme to the letter.

28. In addition to complying with State law requirements relating to the testing role of the Board of Examiners, our proposed plan also fully complies with State law requirements that examinations shall measure a candidate's "merit and fitness" for the position involved.

29. The Board of Education's proposal herein is virtually identical to the "unassembled examination" technique approved by the New York Court of Appeals in Altman v. Lang, 44 Misc. 2d 751, 255 NYS2d 284 (Sup Ct. N.Y. County 1965), aff'd mem. 23 App. Div. 820, 259 NYS2d 779 (1st Dept 1965), aff'd mem. 17 NY 2d 464, 266 NYS2d 975 (1965). The lower court described this technique as

> "an evaluation of training and experience (which) obviates the necessity of applicants to assemble at a particular test site, on a day certain, for written or oral examination." 255 NYS 2d at 286.

30. The procedure involved in Altman v. Lang was to establish a set of education and experience standards and then to rate each candidate under the standards.

31. The New York courts in these cases found this procedure satisfactory even in a situation where State law demanded a competitive examination with a ranking of candidates. There is little doubt that it is satisfactory in this case where State law requires only a qualifying examination. N.Y. Ed. Law §2690-j. 3(b)(2). A qualifying examination is, according to the New York Court of Appeals,

> "merely an assurance that along with personal qualities and associations satisfactory to the appointing officer, there shall also be the attainment of some standard of efficiency established at a minimum. Ottinger v. Civil Service Commission, 240 N.Y. 435, 443, 148 N.E. 627 (1925).

32. Moreover, there is much expert opinion today to the effect that the qualities that are necessary to effectively perform a supervisory job; i.e. leadership qualities, interpersonal qualities, etc. are those qualities that are almost impossible to measure by a comprehensive pretesting examination, but easily measured by on the job evaluations (see e.g. Trachtenberg affidavit and Owens affidavits.)

33. In fact, even the New York City Civil Service Commission, among other jurisdictions, is presently using training and experience examinations, rather than structured examinations, as a bona-fide testing technique in numerous situations. Attached hereto as Exhibit "A" are sample Notices of Examinations of the New York City Civil Service Commission using the device of training and experience testing rather than structured examinations in various positions.

34. Thus, we submit that our proposed modification of the March 1975 Order and Plan is fully valid under State law, both as a measure of merit and fitness and as complying with the statutory role of the Board of Examiners.

35. Notwithstanding the fact that it is our position that irrespective of the changed circumstances set forth in my affidavit dated April 12, 1976, the modified Plan should be adopted because it is better suited to effectuate the goals of the prior decrees herein, I will nevertheless now address myself to responding to some of the Examiner's major attacks on the facts of the changed circumstances set forth in my prior affidavit.

II. THE JOB ANALYSES

36. With respect to the Examiner's contentions that the old job analyses were valid, or, that new job analyses should be undertaken, I respectfully refer this Court to the affidavits of Paul Trachtenberg and Robert Owens, two educational experts who are of the opinion that the old job analyses were inadequate and it would serve almost no purpose whatsoever to attempt to prepare new job analyses for Step 1 of the original Plan.

37. Since Step 1 of the proposed modified Plan contains no structured examination, and will not disqualify anyone with the requisite training, experience and eligibility requirements, there would be no necessity for preparing new job analyses under the proposed modified Plan.

38. For Step 2 of our modified Plan, which we believe is the most crucial and basic step in the licensing procedure, the Chancellor has developed a comprehensive rating and evaluation form, a copy of which is annexed hereto as Exhibit "B", which has been used very successfully by the appointing authorities in the past year to assures that the appointing authorities will make evaluations which are based upon uniform standards and criteria and actual requirements for successful performance on the job.

III. THE CITY'S CURRENT FISCAL SITUATION

39. Since it is the Board of Education and not the Board of Examiners that is responsible for preparing the budget for the City School Districts and submitting it to the City of New York, and living within this budget, it is clear that the Board of Examiners has no standing to [illegible]

the Board of Education how they should allocate their limited resources. It is preposterous for the Board of Examiners to make budgetary recommendations to the Board of Education, when, as is clear from the affidavit of Ethel Fitzgerald they have little knowledge of the facts concerning the fiscal situation of the Board of Education, and the ultimate responsibility for justifying expenditures does not lie with them. In fact, their own budget comes out of the money allocated to the Board of Education by the City.

40. Although it is true that there was knowledge of the City's fiscal crisis before March of 1975, it was not until June of 1975 that the Board of Education was informed, for the first time, of the far-reaching extent of the first major budget cut it would have to make, effective September of 1975, and it was not until August 15, 1975, that the Board of Education received its final notice from the City of New York, that effective September, 1975, the Board of Education's budget would have to be cut by 250 million dollars. Moreover, it was not until February of 1976, that the Board of Education was informed that its budget would have to be cut by another 39.5 million dollars.

41. Some of the devastating effects of these cuts are set forth in my affidavit herein dated April 26, 1976, and in the Basic Fact Sheet on the Stavisky Goodman Bill, prepared by the Office of the Deputy Chancellor and annexed hereto as Exhibit "C".

42. The Board of Examiners cavalierly notes that "even assuming arguendo that the prototype job analyses must be completely done over, at most another $36,000 must be expended".

43. In fact, $36,000 would pay the yearly salaries of two experienced teachers. Certainly, in a time where there have been mass teacher layoffs, it would be sounder educational judgment to use $36,000 to pay the salaries of two teachers, than for job analyses that have a high potential for failure.

44. In paragraphs 40-42 of the affidavit, Ethel Fitzgerald alleges that since the "Stavisky law" was passed, this should lessen the Board of Education's financial problems and ostensibly free funds for such things as job analyses.

45. However, as is set forth in Exhibit "C" herein, which is a basic fact sheet on the Stavisky-Goodman Bill, prepared by the Office of the Deputy Chancellor, "If the Stavisky-Goodman Bill becomes law, the New York City Board of Education will allocate the restored funds for direct instructional services in the classroom." The full details of this commitment are spelled out on pages 7-8 of Exhibit "C" herein. Clearly, the performance of "high-risk" job analyses to enable the Board of Examiners to utilize cumbersome and expensive procedures to formulate "high-risk" examinations would not be covered by this commitment.

46. Also, it is unclear when, if ever, the Board of Education will receive these Stavisky Funds, as we have been informed that when we make a formal demand for these funds, the City will initiate legal action to prevent implementation of the bill.

47. It is most distressing to the Board of Education that the Examiners speak so cavalierly of the Board of Education's monies, when the attorneys for the Board of

Examiners in this lawsuit are being paid out of the Board of Education's budget, and have already been paid approximately a quarter of a million dollars to represent the Board of Examiners in this lawsuit. This is another compelling reason why the Board of Education so strongly urges that this litigation be resolved by a Plan that can work now, that is acceptable to the prevailing party herein, and has little risk of producing an unconstituional examination system which will engender further litigation and further attorney fees.

48. In paragraph 43 of her affidavit, Ethel Fitzgerald mentions the Examiner's proposal of preparing prototype examinations and then deferring actual administration of these examinations until supervisors are needed.

49. However, as is set forth in the affidavit of Dr. Owens, this proposal is not a viable one because the school system is changing so rapidly that it is highly unlikely that any job analyses that are prepared today will be relevant to the system in a few years from now.

III. CHANGED PERSONNEL REQUIREMENTS IN THE CITY'S SCHOOL

49. As I stated in my affidavit dated April 12, 1976, "because of the fiscal crisis and declining pupil register and school closings, not only is there no present need for any additional supervisors, but we now have 143 excessed supervisors slated for layoffs, with further layoffs scheduled for September of 1976."

50. The only reason we were able to postpone the layoffs of supervisors for the current school year is that the Counsel of Supervisory Associations gave up their salary adjustments in order to pay, through August of 1976, the salaries of these 143 supervisors who were slated to be laid off.

51. Moreover, the Board of Education will probably have to lay off additional Assistant Principals in the near future, despite the fact that its been two years since we've have hired any new Assistant Principals.

52. Although there are a few vacancies for elementary and junior high school principals, within the next year, we expect to be closing at least 40 schools, and those supervisors who will be excessed from these closed schools will be the ones that will be placed in these few vacancies which exist.

53. Accordingly, we submit that to do job analyses in a system where there will be minimal vacancies for years

to come, will very likely result in the job analyses being irrevalent to the needs of the future, and thus, at best, an expensive exercise in futility.

54. To engage in further debate with the Board of Examiners about when we actually knew of the changed circumstances is absurd.

55. The crucial point is that these are the present facts, and the issue is are they to be ignored, or are they to be considered in determining what kind of supervisory selection plan is realistic in the light of present day needs.

56. In paragraph 49 of her affidavit Ethel Fitgerald states that the Board of Education has been using a "device" of temporary appointment of "interim actings" to avoid the need to fill vacancies in the name provided by law. This is utter nonsense. "Interim actings" are used to protect the seniority of supervisors in the event of excessing and layoffs and have no relevance to the issues at bar.*

57. Although the Examiners repeatedly state that the Board of Education is using these "changed circumstances" as a justification for destroying the "merit" system, we submit that our Plan will result in a system that is more likely to be based on merit and fitness than the original Plan herein. (See e.g. affidavits of Paul Trachtenberg and Robert Owen).

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*An interim acting position is still considered a supervisory vacancy which could be filled by excessed supervisors. It is likely that there will be further supervisory position contractions. In addition, current State Law does not allow reversion to previously held positions. An interim acting assistant principal, since he or she is not truly a supervisor, would have no legal problems going back to his or her previously held position.

IV. ON THE JOB EVALUATIONS

58. As is fully set forth in the affidavits of Paul Tractenberg and Robert Owens, it is our position, as well as the position of the plaintiffs, and of educational experts, that the most important and valid part of any supervisory examination is the on the job evaluation; i.e. Step 2.

59. It is only in an on the job evaluation that one can actually determine if a supervisor has leadership and interpersonal skills qualities, creativity / which are almost incapable of measurement in a pre-structured testing device.

60. Certainly the employer, i.e., the appointing authority, who comes into daily contact with the employee is better qualified to conduct an on the job evaluation that some group from the Board of Examiners who would make infrequent visits to the school, and, at most, only duplicate and intrude upon the employer's role and function.

61. In the past year, we were informed by many Community School Boards that the Board of Examiner's presence in the on the job evaluationswas an annoying intrusion on the employer-employee relationship and served no useful function.

62. The fact that the Board of Examiners would be willing to take themselves out of Step 2, if licensure followed Step 1, only points out how unimportant they consider Step 2, and how they realize that they really have no useful function there. On the other hand, if permanent licensure were to follow Step 1, it would mean that the most vital portion of the testing procedure would be reduced to a sham.

63. In fact, even under State Law it is the Chancellor and the Community School Boards who are required to evaluate personnel on the job to determine whether they should be retained and whether they should obtain tenure, and they have been performing this function for years. There is nothing under State Law which ever gave the Board of Examiners any role in on the job evaluations.

64. Since Step 1 gives the Board of Examiners the full role that they are entitled to under State Law, and since it would serve no useful function to keep the Examiners in Step 2, other than to provide them with more work, we submit that they have no place in Step 2.

* * *

65. With respect to the affidavit of Saul Cohen, the Board of Education submits that if it did, in fact, delegate any of its own responsibilities to the Board of Examiners, in the past, it was wrong in doing so, and does not intend to do so in the future.

66. However, the Board of Education and the Chancellor did not fail to defend the challenged examinations out of any dereliction of duty, but because they were not convinced, as the Examiners were, that they were defensible. In fact, as is evident from the record herein, former Chancellor Scribner was of the opinion that the challenged examinations were totally invalid.

67. Moreover, the 1976 Board of Education is a different Board than the 1970 Board and the 1973 Board., and if the present Board is anxious to fulfill its statutory responsibilities in a manner responsive to the needs of

the present school system, although the Board of Examiners may not be appreciative of the Board of Education's concern herein, we are certain that the City School District will benefit from our concern.

68. Finally, as is clear from the memorandum submitted by the plaintiffs, far from trying to destroy a settlement reached by all parties, the Board of Education is presently attempting to modify the decree herein by proposing a new plan which is better suited to accomplishing the goals of the 1975 decree.

WHEREFORE, for all of the reasons hereinabove set forth, it is respectfully requested that the Board of Education's motion to modify the March 25, 1975 Order and Plan be granted.

Robert L. Christen
ROBERT CHRISTEN

Sworn to before me this
27th day of May, 1976

JULIUS KAPLAN
Commissioner of Deeds
City of New York 2-1760
Certificate filed in Kings County
Commission Expires May 1, 1977

Julius Kaplan

EXAMINE RCU (LH) Cal. No. 12.3.73 -- 988

EXPERIENCE PAPER FORM A TC # 92239

LANDMARKS PRESERVATION OCCUPATIONAL GROUP 812a

DEPARTMENT OF PERSONNEL
CITY CIVIL SERVICE COMMISSION

NOTICE OF EXAMINATION
EXAM. NO. 4009

LANDMARKS PRESERVATION SPECIALIST TRAINEE

This is a trainee class of positions with a one-year term. At the end of one year of satisfactory training and service, employees in this class of positions will receive appointment to the title of Landmarks Preservation Specialist. A Landmarks Preservation Specialist Trainee's employment may be terminated at the end of the first two months of employment or at the end of any pay period thereafter during the first year of employment, or at the end of that year, if his conduct, capacity or fitness is not satisfactory.

SALARY AND VACANCIES: The appointment rate for this position is $11,500 per annum. There are three vacancies in the Landmarks Preservation Commission.

APPLICATIONS: Received from April 2, 1974 through April 22, 1974.

PROMOTION OPPORTUNITIES: Employees in the title of Landmarks Preservation Specialist are accorded promotion opportunities, when eligible, to the title of Senior Landmarks Preservation Specialist.

MINIMUM REQUIREMENTS: (a) A baccalaureate degree from an accredited college with a major in architecture, civil engineering, architectural history, history of art, city planning or a related field and one year of full-time paid experience in architecture, city planning, in building restoration or preservation of aged buildings, or in a related field; or (b) high school graduation or evidence of having passed an examination for a high school equivalency diploma or U.S. Armed Forces GED certificate with a score of at least 35 on each of the five tests and an overall score of at least 225 in the examination for the diploma or certificate plus five years of experience as described in (a) above; or (c) a master's degree from an accredited college with major studies in architecture or historic preservation; or (d) a satisfactory equivalent combination of education and experience as described in (a) above. However, all candidates must be high school graduates or possess the high school equivalency described above.

The minimum requirements must be met by the last date for the receipt of applications.

Experience Paper Form A must be filed with the application.

DUTIES AND RESPONSIBILITIES: Under direct supervision, is trained in and assists in carrying out difficult technical, analytic and design services in planning, restoration, renovation, enhancement, redesign and preservation of historic structures; performs related work

EXAMPLES OF TYPICAL TASKS: Under direct supervision, is trained in and performs the following tasks: Assists in reviewing plans for proposed new construction or alteration, redesigning unacceptable applications where necessary; under close supervision, drafts terms of Commission approval: assists architects on Municipal restoration projects; inspects work under construction for compliance or violation; assists in the preparation of documents for legal action against violators; performs requisite research; assists in preparing recommendations for alterations, restoration and enhancement of Landmarks and buildings in Historic Districts; analyzes cost and feasibility, providing Landmarks Preservation Specialist with data and recommendations; performs requisite research; assists property owners in designated Landmarks areas and their architects in restoration and/or renovation of designated property; assists in the investigation of new preservation technology; compiles inventories of restoration architects, contractors, sources of supply, and techniques; follows through on field experimentation; under

EXHIBIT "A"
(Pages 1-8 Following)

813a

direction, carries out original, complex research directed toward policy development or adoption of standards and regulations; assists the Landmarks Preservation Specialist in drafting standards or regulations for submission to the Commission; performs requisite research; reviews Department of Buildings dockets for alteration permits issued for properties that have been designated as Landmarks; checks plans filed for conformity with regulations of the Commission; investigates community complaints of unapproved work in progress; working with consultants, volunteers and others, participates in developing plans for restoration, maintenance and enhancement of individual buildings, blockfronts and areas; provides photographs, drawings, research and details, utilizing precise preservation techniques.

TESTS: Training and experience, weight 100, 70% required; oral, qualifying (see below). Training and experience rating will be based on candidate's statements on Experience Paper Form A. There will be no other competitive test. Therefore, the Experience Paper Form A must be filled out completely and in detail, INDICATING THE TOTAL NUMBER OF CREDITS EARNED IN THE FIELD OF SPECIALIZATION, AND ALL SUCH COURSES AND THE NUMBER OF CREDITS EARNED IN EACH.

The ability to speak and understand American-English is required of all candidates. This ability may be demonstrated by either (a) attendance at a junior high school, high school, or college for at least four years of full-time study where American-English is used as the primary language of instruction; or (b) passing a qualifying oral test. This oral test will be given to candidates prior to appointment.

After meeting the minimum requirements, credit in the training and experience test will be granted for a maximum of an additional six years of experience. Candidates must, however, list all experience for which credit may be given as indicated below.

Credit will be granted, after meeting the minimum requirements, for full-time paid professional experience in architecture, in landmarks research, or in a related field.

Credit at a higher rate will be granted, after meeting the minimum requirements, for full-time paid professional experience in the restoration or preservation of buildings, or in a related field.

Additional credit will be granted, after meeting the minimum requirements, for a master's degree or a certificate from an accredited college in restoration and/or preservation of histroic buildings.

The pertinent sections of the General Examination Regulations and the General Provisions of the Notice of Examination are also part of this notice.

CITY CIVIL SERVICE COMMISSION: Harry I. Bronstein, Chairman; Nicholas LaPorte, Jr., Secretary.

Experience Form "A"

51210
11.1.71 - rw

814a

DEPARTMENT OF PERSONNEL
CITY CIVIL SERVICE COMMISSION

NOTICE OF EXAMINATION

OCCUPATIONAL THERAPIST
EXAM. NO. 1138

The eligible lists resulting from this examination will be made available to the New York City Health and Hospitals Corporation for its use.

SALARY: This position has a starting salary of $8,600 per annum.

APPLICATIONS: Accepted for filing in person only, between 9 a.m. and 11 a.m., on any weekday, not a holiday, in Room M-1, Mezzanine Floor, 40 Worth Street, Manhattan from November 3, 1971 until further notice.

LIST ESTABLISHMENT: Daily lists will be established.

PROMOTION OPPORTUNITIES: Employees in the title of Occupational Therapist are accorded promotional opportunities, when eligible, to the title of Senior Occupational Therapist.

MINIMUM REQUIREMENTS: Candidates must be graduates of an approved school of occupational therapy or therapists registered by the American Occupational Therapy Association.

The minimum requirements must be met on the date the application is filed.

Form A Experience Paper must be filed with the application.

WAIVER OF CITIZENSHIP:
In accordance with Section 53 of the Civil Service Law, citizenship has been waived as a requirement for this position. However, on the date of examination, non-citizens must have a valid Alien Registration Receipt Card (Form I-115) [green card] or an Arrival-Departure Record Card (Form I-94) duly stamped as follows: "Employment will not affect immigration status." To be eligible for continued employment, employees must diligently prosecute the procedures for citizenship.

DUTIES AND RESPONSIBILITIES: Under supervision, assists in the mental and physical rehabilitation of patients through occupational therapy; performs related work.

EXAMPLES OF TYPICAL TASKS: Assists in evaluation of patient's performance of the activities of daily living; may administer range and motion tests.
Instructs the disabled in activities of daily living, such as washing, dressing, eating and handling of such corrective devices as braces and wheel chairs. Instructs patients in fine and applied arts and certain pre-vocational activities for the purpose of mental and physical re-education. Teaches therapeutic arts and crafts, including design in leather, metal, plastics, textiles and wood. Assists in setting up programs for the guidance of families with handicapped or disabled members in the home. May instruct student nurses and other personnel in the theory and practice of occupational therapy. Maintains equipment, cares for and requisitions supplies; keeps records and makes reports.

TESTS: Training and experience, weight 100, 70% required. Training and experience rating will be based on candidate's statements on Experience Form A. There will be no other competitive test. Therefore, Experience Form A must be filled out completely and in detail.

815a

Higher credit will be granted to candidates who meet the minimum requirements and who, in addition, have at least one year of full-time paid experience supervising non-professional staff assisting in occupational therapy.

Highest credit will be granted to candidates who meet the requirements for higher credit and who, in addition, have at least one year of full-time paid experience supervising occupational therapists.

Additional credit will be given to persons who possess a master's degree in Occupational Therapy from an approved school of occupational therapy.

The pertinent sections of the General Examination Regulations and the General Provisions of the Notice of Examination are also part of this notice.

Experience Paper Form A
Language Proficiency Tests Form,
Ethnic Survey Card

Code No. 51213
Cat. No. 787-5.14.75

816a

NOTICE OF EXAMINATION

EXAMINATION NO. 5113

REHABILITATION COUNSELOR

This examination is being held to fill vacancies only in the New York City Health and Hospitals Corporation. The results of this examination will be made available to the New York City Health and Hospitals Corporation for the establishment of its own eligible list.

The eligible list resulting from this examination may be selectively certified to fill vacancies of Rehabilitation Counselor which require a working knowledge of both English and another language. Those who are placed on the eligible list may be permitted to take a Language Proficiency test to determine the ability to speak and understand another language. Candidates wishing to take this Language Proficiency test must so indicate at the time of filing of application on the special insert provided. Candidates who do not so indicate at the time of filing their application will not be permitted to take the test. Only those eligibles who pass the test will be eligible for such certification.

SALARY AND VACANCIES: The appointment rate for this position is $13,250 per annum. There are 13 vacancies in the New York City Health and Hospitals Corporation. Salary information is included for general information purposes only. Actual appointment rate may be lower than the amount indicated.

APPLICATIONS: Received from December 2, 1975 through December 22, 1975.

PROMOTION OPPORTUNITIES: Employees in the title of Rehabilitation Counselor are accorded promotion opportunities, when eligible, to the title of Senior Rehabilitation Counselor.

MINIMUM REQUIREMENTS: (a) A master's degree from an accredited college in rehabilitation counseling, vocational rehabilitation or a related field after completion of a two-year course of study which includes a supervised internship within the past twelve years; or (b) A master's degree from an accredited college in rehabilitation counseling, vocational rehabilitation, vocational guidance or a related field in a course of study which does not include a supervised internship, plus one year of full-time paid experience acquired within the last twelve years, in vocational rehabilitation or vocational guidance, or (c) twenty-four credits from an accredited college in the following content areas: rehabilitation philosophy, history and structure; medical aspects of disability; psycho-social aspects of handicapped conditions; occupational information and the world of work; counseling theory and techniques; community organization and resources; placement processes and job development; the psychology of personal and vocational adjustment; evaluation and assessment, plus three years of experience as described in (b) above; or (d) a baccalaureate degree or 120 credits from an accredited college plus four years of experience as described in (b) above; or (e) a satisfactory equivalent combination of education and experience. However, except for those candidates who qualify under (c) above, all candidates must possess at least six months of full-time paid vocational rehabilitation or vocational guidance experience, acquired within the last twelve years, dealing with the mentally or physically disabled, handicapped or aged.

Minimum requirements must be met by the last date for receipt of applications.

Experience Paper Form A must be filed with the application.

Applicants must put their social security number in the box labled "Application Number" on the Experience Paper Form A, on Language Proficiency Tests form and on the Ethnic Survey Card.

DUTIES AND RESPONSIBILITIES: In the New York City Health and Hospitals Corporation, under supervision, assists in the vocational rehabilitation of clients with disabilities or impairments; performs related work.

(OVER)

EXAMPLES OF TYPICAL TASKS: Selects, administers, scores and interprets vocational aptitude and other standardized tests; prepares reports of test findings used for vocational and educational training of patients; reviews case records for information relating to occupational adjustment; interviews, orients and gives vocational guidance to patients in terms of educational and occupational background, socio-economic status, medical prognosis and test results; secures cooperation of public and private organizations and employers in the vocational training or placement of patients; participates in conferences and consultations on programs to assist patients in solving problems resulting from hospitalization, disability or maladjustment; helps coordinate vocational programs in a hospital with educational, recreational and other non-medical services made available by community agencies; refers patients to other services in the hospital; observes the progress of patients in vocational training programs, prepares case summaries and progress reports; keeps records; assists in maintenance of an occupational information library; assists in in-service training programs; applies pertinent federal, state and local legislation.

TESTS: Training and Experience, weight 100, 70% required; oral, qualifying. There will be no competitive test other than an evaluation of training and experience. After meeting the minimum requirements, credit will be given for a maximum of five years of full-time paid experience, acquired within the last twelve years. Training and experience rating will be based on candidate's statements on Experience Paper Form A. Therefore, Experience Paper Form A must be filled out completely and in detail including dates and number of hours per week worked and listing all college courses in the following content areas: rehabilitation philosophy, history and structure; medical aspects of disability; psycho-social aspects of handicapped conditions; occupational information and the world of work; counseling theory and techniques; community organization and resources; placement processes and job development; the psychology of personal and vocational adjustment; evaluation and assessment, and other related areas. Candidates are warned to list all training and experience for which credit may be given as described below since they will not be permitted to add additional training and experience once they have filed their application. Training or experience will not be found acceptable unless it be verifiable. Training and experience listed on Experience Paper Form A will receive credit only to the extent that it is described clearly and in detail.

The ability to speak, understand and be understood in English is required of all candidates. This ability may be demonstrated by either (a) attendance at an intermediate school, junior high school, high school, and/or college at the undergraduate level for at least four years of full-time study where Standard English, as spoken in the United States, is used as the primary language of instruction (part-time study will be accepted on a pro-rated basis); or (b) passing a qualifying oral test.

After meeting minimum requirements credit will be granted to those candidates who have full-time paid experience, acquired within the last twelve years, in vocational guidance, occupational therapy or psychological counseling or other related therapeutic or counseling experience.

Credit at a higher rate may be granted to those candidates who have full-time paid experience, acquired within the last twelve years, in vocational rehabilitation.

Credit at a still higher rate may be granted to those candidates who have full-time paid experience, acquired within the last twelve years, supervising staff performing vocational rehabilitation and/or vocational guidance duties.

In addition to the above, after meeting the minimum requirements, credit may be granted for courses completed at an accredited college in the following content areas: rehabilitation philosophy, history and structure; medical aspects of disability; psycho-social aspects of handicapped conditions; occupational information and the world of work; counseling theory and techniques; community organization and resources; placement processes and job development; the psychology of personal and vocational adjustment; evaluation and assessment, and other related areas.

Credit will also be granted for possession of a doctorate or MASTER'S degree completed at an accredited college, in rehabilitation counseling, vocational rehabilitation, vocational guidance or a related field.

(c)

CS(PG)S
Rehabilitation Therapy
Occupational Group
Experience Paper Form A
Ethnic Survey Card

Cal. No. 287
5.14.75
51240

818a

NOTICE OF EXAMINATION

EXAMINATION NO. 5096

SUPERVISING AUDIOLOGIST

SALARY AND VACANCIES: The appointment rate for this position is $16,775 per annum. There are two vacancies in the Health Services Administration. Salary information is included for general information purposes only. Actual appointment rate may be lower than the amount indicated.

APPLICATIONS: Received from March 2, 1976 through March 22, 1976.

MINIMUM REQUIREMENTS: (1) Graduation from an accredited college with a doctorate (Ph. D. or Ed. D.) or the completion of all the requirements for a doctorate except the dissertation, and one year of full-time paid experience as an audiologist diagnosing and/or researching audiological problems, or performing speech and/or hearing rehabilitation; or (2) graduation from an accredited college with a master's degree in audiology and related fields, and two years of full-time paid experience as described in (1) above; or (3) a satisfactory equivalent combination of education and experience.

Minimum requirements must be met by the last date for receipt of applications.

Experience Paper Form A must be filed with the application.

Applicants must put their social security number in the box labeled "Application Number" on the Experience Paper Form A.

DUTIES AND RESPONSIBILITIES: Under direction, with broad latitude for independent action, performs highly technical and responsible professional work, and/or supervisory work in the field of audiology, or in the auditing of audiological services under the Medical Rehabilitation and the Medical Assistance Programs; performs related work.

EXAMPLES OF TYPICAL TASKS: Organizes and supervises the audiology functions of a Health Department program; assigns and directs audiologists and other non-medical personnel assigned to hearing and speech program, or staff assigned to the review and approval of requests for hearing aids in the Medicaid Program and the Medical Rehabilitation Program ; participates in general staff conferences for total evaluation of individual cases and presents audiological aspects of case reports; participates in individual and group research projects, organizing and conducting such research; acts in a liaison capacity with other departments, schools, and hospitals for the coordination of total care of individuals, particularly those with multiple handicaps; evaluates individuals with special audiological problems; participates in training programs for staff assigned to hearing clinics or audiology screening programs; trains staff in the use of audiological equipment, including hearing aid evaluations; in conduct of hearing evaluations; and in calibration and use of audiological equipment; develops procedures and forms for processing procedures for hearing testing activities, or for the review of requests for hearing aids; evaluates the effectiveness of procedures and makes appropriate modifications.

Tests: Training and Experience, weight 100, 70% required; Oral, Qualifying (see below). There will be no competitive test other than an evaluation of training and experience. After the candidate has met the minimum requirements, credit will be given for a maximum of five years of full-time paid experience acquired within the last twelve years. Training and experience rating will be based on candidate's statements on Experience Paper Form A. Therefore, Experience Paper Form A must be filled out completely and in detail including dates and number of hours per week worked and listing all graduate college courses beyond those required for the master's degree in the following content areas: audiology, speech pathology, acoustic instrumentation, hearing science, psycholinguistics, psycho-acoustics, statistics, psychology, sociology, social work, teacher education. Candidates are warned to list all training and experience for which credit may be given as described below since they will not be permitted to add additional training and experience once they have filed their applications. Training or experience will not be found acceptable unless it be verifiable. Training and experience listed on Experience Paper Form A will receive credit only to the extent that it is described clearly and in detail.

After the candidate has met the minimum requirements, credit will be granted for full-time paid experience, acquired within the last twelve years, as an audiologist diagnosing and/or researching audiological problems or performing speech and/or hearing rehabilitation.

After the candidate has met the minimum requirements, credit at a higher rate will be granted to those candidates who have full-time paid experience, acquired within the last twelve years, teaching college courses such as the following: audiology, speech pathology, speech and/or hearing rehabilitation.

After the candidate has met the minimum requirements, credit at a still higher rate will be granted to those candidates who have full-time paid experience, acquired within the last twelve years, supervising staff diagnosing and/or researching audiological problems, or supervising staff performing speech and/or hearing rehabilitation. Experience as a director or coordinator of a major audiological program or facility will be considered to be of the highest quality in this category.

In addition to the above, after the candidate has met the minimum requirements, credit will be granted for graduate credits beyond the master's degree at an accredited college in the following content areas: audiology, speech pathology, acoustic instrumentation, hearing science, psycholinguistics, psycho-acoustics, statistics, psychology, sociology, social work, teacher education.

Credit will also be granted for possession of a Certificate of Clinical Competency in Audiology from the American Speech and Hearing Association.

The ability to speak, understand and be understood in English is required of all candidates. This ability may be demonstrated by either (a) attendance at an intermediate school, junior high school, high school, and/or college at the undergraduate level for at least four years of full-time study where standard English, as spoken in the United States, is used as the primary language of instruction (part-time study will be accepted on a pro-rated basis); or (b) passing a qualifying oral test. This oral test will be given to candidates prior to appointment.

Eligibles will be required to pass a qualifying medical test prior to appointment. Eligibles will be evaluated on the basis of the medical standard below.

Where it is indicated below that a condition may reject, rejection will be based upon the determination of the examining physician that the condition will interfere with the candidate's ability to engage in the activities performed in the above-mentioned class of positions.

1. A candidate will be rejected for any current medical impairment which will prevent him from performing the duties of the class of positions.

2. Any psychiatric illness or disability that impairs the candidate's ability to perform the duties of the class of positions, may reject.

3. Excessive use of alcohol which interferes with normal functions, will reject. History of, may reject.

4. The use of drugs or chemicals, which interfere with normal functions, will reject. History of, may reject.

5. Infectious or Communicable Diseases in an infectious or communicable stage, rejects, until controlled or cured.

The pertinent sections of the General Examination Regulations and the General Provisions of the Notice of Examination are also part of this notice, and are printed the first Monday of each month in the City Record.

CITY CIVIL SERVICE COMMISSION: Alphonse E. D'Ambrose, Chairman; James W. Smith and Josephine L. Gambino, Commissioners; Nicholas LaPorte, Jr., Secretary. (TC #51240)

820a

THE CITY SCHOOL DISTRICT OF NEW YORK
DIVISION OF PERSONNEL
65 COURT STREET, BROOKLYN, NEW YORK 11201

CONFIDENTIAL

PERFORMANCE PLANNING & EVALUATION REPORT
SUPERVISORY PERSONNEL

SECTION I

Supervisor _____ File No. _____

(Last Name) _____ (First) _____ (Initial) _____

Position Title & Date of Appointment:

Location: Central Office, School, Borough, District, etc.:

Immediate Supervisor:

Name _____ Title _____ Location _____

SECTION II

Planning: Setting of specific objectives — Date

Supervisor's Signature: _____ _____

Immediate Supervisor's Signature: _____ _____

SECTION III

Performance Evaluations: Review with Supervisor — Date

Supervisor's Signature: _____ _____

Evaluating Supervisor's Signature: _____ _____

Immediate Superior's Signature: _____ _____

Copies

At planning stage

1 to Supervisor

At evaluation stage

1 to Supervisor

1 to Evaluating Supervisor -- for inclusion in Supervisor's Official File

1 to Immediate Superior (Appropriate Superintendent, Executive Director)

1 to Division of Personnel.

EXHIBIT "B"

% Relative Importance		Rating
	1. OBJECTIVE:	
	1. PERFORMANCE:	
	2. OBJECTIVE:	
	2. PERFORMANCE:	
	3. OBJECTIVE:	
	3. PERFORMANCE:	
	4. OBJECTIVE:	
	4. PERFORMANCE:	
	5. OBJECTIVE:	
	5. PERFORMANCE:	
100%		

OVERALL EVALUATION ON SPECIFIC OBJECTIVES

(Please use additional sheets, if necessary)

PERFORMANCE EVALUATION - AREAS OF RESPONSIBILITY
(See instructions on Page 4 for completing the areas of performance below.)

	Rating
INSTRUCTIONAL & SCHOOL PROGRAM IMPROVEMENT: Consider, to the extent applicable effectiveness in areas of objectives, curriculum, teacher training, instructional materials, meeting individual and group needs, motivating students to achieve, guidance, discipline, testing, co-curricular activities, health, etc. Comments: 822a	
ADMINISTRATION: Consider effectiveness in planning, organizing, leading, follow-up, controlling, and establishing team-work in administrative functions such as record keeping, reports, correspondence, office management, security, plant, etc. Comments:	
STAFF SUPPORT: Consider effectiveness in selecting, training, evaluating and support of staff; in this regard consider objectivity, sensitivity, morale building, participation, incentives, firmness, cooperation, etc. Comments:	
RELATIONSHIPS: Consider relations at all levels, i.e. pupils, parents, teachers, subordinates, supervisors, community school boards, community, other departments or agencies and professional organizations. Describe effect of involvement with community resources, parent organizations, and availability for consultations, grievances, guidance, etc. Comments:	

OVERALL PERFORMANCE EVALUATION: Indicate the rating which most accurately characterizes the employee's total performance, i.e. a composite of page 2 and 3 evaluations.
Comments:

EVALUATING SUPERVISOR'S RECOMMENDATION FOR IMPROVEMENT OF PERFORMANCE (DEVELOPMENT NEEDS OR OTHER)
Comments:

EVALUATING SUPERVISOR'S RECOMMENDATION: (Continuation, Conditional Retention, Termination)
Comments:

INSTRUCTIONS FOR COMPLETING
PERFORMANCE PLANNING & EVALUATION REPORT

PLAN[illegible]G – SPECIFIC OBJECTIVES: 823a

In c[illegible]nection with the regular duties of the position, identify major specific objectives to be achieved as agreed upon by the supervi[illegible]r and the evaluating supervisor. List in the Objective Boxes on Page 2. Add additional page(s) if there are more objectiv[illegible]s.

RELA[illegible]VE IMPORTANCE:

At time of planning, indicate the relative importance of each planned objective by allocating percentages adding to 100%.

CHANGES:

During the evaluation period, objectives may be altered or cancelled, or their relative importance may be changed. Following discussion of changes with supervisor, evaluating supervisor will provide the supervisor with a revised page 2.

PERFORMANCE EVALUATION – SPECIFIC OBJECTIVES:

In the performance boxes on page 3, comment in specific terms on performance, including actual accomplishment, for each planned objective.

PERFORMANCE EVALUATION – AREAS OF RESPONSIBILITY:

The evaluating supervisor shall comment on the supervisor's performance in each of the four major areas of responsibility for those sub-areas which are appropriate.

RATING CODE.

Insert appropriate rating from code below in right hand columns of pages 2 and 3 opposite each item.

5- Superior, exceptional performance.

4- Contributes significantly above job requirements.

3- Meets requirements of all aspects of job satisfactorily and within expectations.

2- Marginal performance.

1- Unsatisfactory performance.

N.A. - Not applicable.

For supervisors with 5 or more years of supervisory experience in title, the rating S (satisfactory) or U (unsatisfactory) may be used, if desired, in lieu of above. However, descriptive comments concerning the supervisor's performance must be entered below each objective on page 2.

FREQUENCY OF REPORT:

Initiate report within 6 months of supervisor entering new position; complete within the first year and at least annually thereafter for all supervisory personnel.

NOTE: The supervisor's signature on the face of this report indicates he/she has been advised of the objectives established and, subsequently, has been advised of the evaluating supervisor's performance evaluation. Space is provided on page 4 to record supervisors comments, if any, resulting from the planning or evaluation discussions. The person being evaluated may submit response with documentation, if he/she wishes.

COMMENTS:

EMPLOYEE'S STATED CAREER GOALS:

A BASIC FACT SHEET ON THE STAVISKY-GOODMAN BILL SENATE VETO OVERRIDE

APRIL 6, 1976

(REVISED APRIL 12, 1976)

PREPARED BY
OFFICE OF THE DEPUTY CHANCELLOR
NEW YORK CITY BOARD OF EDUCATION

BERNARD R. GIFFORD, DEPUTY CHANCELLOR

EXHIBIT "C"

THE OFFICE OF THE DEPUTY CHANCELLOR WELCOMES AN INDEPENDENT AUDIT OF THE DATA APPEARING IN THIS DOCUMENT. THIS REPEATS AN OFFER WHICH HAS BEEN EXTENDED TO THE MAYOR, BUDGET OFFICIALS OF NEW YORK CITY, AND THE EMERGENCY FINANCIAL CONTROL BOARD.

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THE 1975-1977 BOARD-UFT CONTRACT 29

AVOIDING SCHOOL CHAOS IN NEW YORK CITY

On March 31, 1976, the New York State Assembly voted overwhelmingly (128-18) to override the Governor's veto of the Stavisky-Goodman bill. This bill, aimed at protecting the public schools of New York City against unfair budget cuts, calls for no additional expenditures by either the city or the state. As the New York Times pointed out in a recent editorial, the Stavisky-Goodman bill

> does not diminish the power of the Emergency Financial Control Board to determine the ceiling on over-all expenditures. It would merely prevent the city from saddling the schools with additional cuts, out of proportion to the austerity imposed on other services.

The matter of overriding the Governor's veto will soon come before the State Senate. The purpose of this document is to explain in brief, factual terms why the public schools of New York City warrant the kind of legislative protection guaranteed by the Stavisky-Goodman bill and recently reaffirmed by the Assembly in its historic veto override.

EDUCATION HAS BEEN CUT DISPROPORTIONATELY

The Mayor, in a March 31, 1976, memorandum to all members of the Legislature, made the following statement:

> "The City's budgetary cuts affecting education were considerably less, proportionately, than those affecting the other vital services of the City."

The Mayor's own facts tell another story. During the past three years, education's share of the total city expense budget has averaged 22%:

FISCAL YEAR	TOTAL CITY EXPENSE BUDGET	TOTAL PUBLIC SCHOOL BUDGET	PERCENT OF TOTAL
1972-1973	$10,085,731,113	$2,166,084,697	21.47672462%
1973-1974	11,107,314,896	2,562,951,357	23.07444581
1974-1975	13,084,795,149	2,866,280,827	21.90543141
		Three-year Average	22.15220061%

Source: City amounts are modified budgets shown in the Adopted Budget, 1973-1974, 1974-1975, 1975-1976. Public school amounts are end-of-year budget modifications.

The total expense budget includes funds from all sources: city tax levy, city capital, state aid and federal aid. It includes expenditures for all purposes, controllable and non-controllable: direct services, administration and support services, pensions and debt service.

During the past school year, education was cut a total of $262 million, which is 25% of the $1,032 million citywide tax levy cut.

TAX LEVY CUTS
(MILLIONS OF DOLLARS)

	CITYWIDE	PUBLIC SCHOOLS	SCHOOLS' SHARE
April 1975	$ 490.4	$135.2	27.6%
July 1975	341.5	88.1	25.8
October 1975	200.0	38.7	19.4
TOTAL	$1,031.9	$262.0	25.4%

Source: Office of the Mayor, "New York City Financial Plan Program To Close Budget Gap, Fiscal Year 1977 and Fiscal Year 1978," March 25, 1976 p. 33.

The rules of arithmetic are immutable regardless of whether the Mayor's analysis fails to recognize them. His own data demonstrate conclusively that education was cut proportionately more than other services.

THE MAYOR'S FINANCIAL PLAN WILL DESTROY THE CITY'S PUBLIC SCHOOLS

During the present school year, the public schools' educational program has been devastated by the $262 million tax levy cut imposed by the Mayor. Instructional program offerings have been curtailed, instructional support services and ancillary pupil support services have been withdrawn, and administration and support services have been cut. Specifically:

- Average class sizes at all grade levels have risen by 4 to 5 pupils.
- Instructional programs taught by specialist teachers -- reading, mathematics, music, art, library -- have been dropped.
- Instructional time for all elementary and junior high school pupils was reduced by two periods.
- Summer, adult and evening high school programs were curtailed.
- After-school programs and extra curricular student activities were cut back.
- The evaluation and placement of pupils with emotionally and physically handicapping conditions has been slowed down.
- Subsidized transportation for some pupils has been stopped.
- The school health program has been cut back.
- Custodial services have been reduced and maintenance has been deferred.
- Teachers on sabbatical leaves have been recalled.
- Central headquarters has been cut.

The table below shows staff changes for teachers, paraprofessionals, school aides, and school guards who are supported by general funds (non-reimbursable monies) city tax levy, city capital funds, state education aid, and funds from general state revenue sharing. These numbers are taken from actual payrolls and are not estimates derived from budget data.

REDUCTION IN STAFF SUPPORTED BY GENERAL FUNDS*

	1974-1975	1975-1976	CHANGE NUMBER	CHANGE PERCENT
Teachers				
Full-time	56,623	47,675	- 8,948	- 16%
FTE Per Diem	4,272	2,654	- 1,618	- 38%
FTE Per Session	2,865	1,805	- 1,060	- 38%
Total Teachers	63,760	52,134	- 11,626	- 18%
Para-Professionals	3,095	2,796	- 299	- 10%
School Aides	8,365	6,009	- 2,356	- 28%
School Guards	2,160	1,315	- 845	- 39%

In addition, 1,700 teachers and 5,500 para-professionals supported by reimbursable funds have been laid off. There have also been cutbacks in services due to the lay off and attrition of supervisors, administrative personnel, engineers and architects, school lunchroom helpers and custodial helpers.

*Full-time teacher data are from payrolls for June 1975 and March 1976. Per diem teacher data are averages from payrolls for December, January and February. Per session teacher data are from payrolls through February. Data on hourly titles are from payrolls for the month of February.

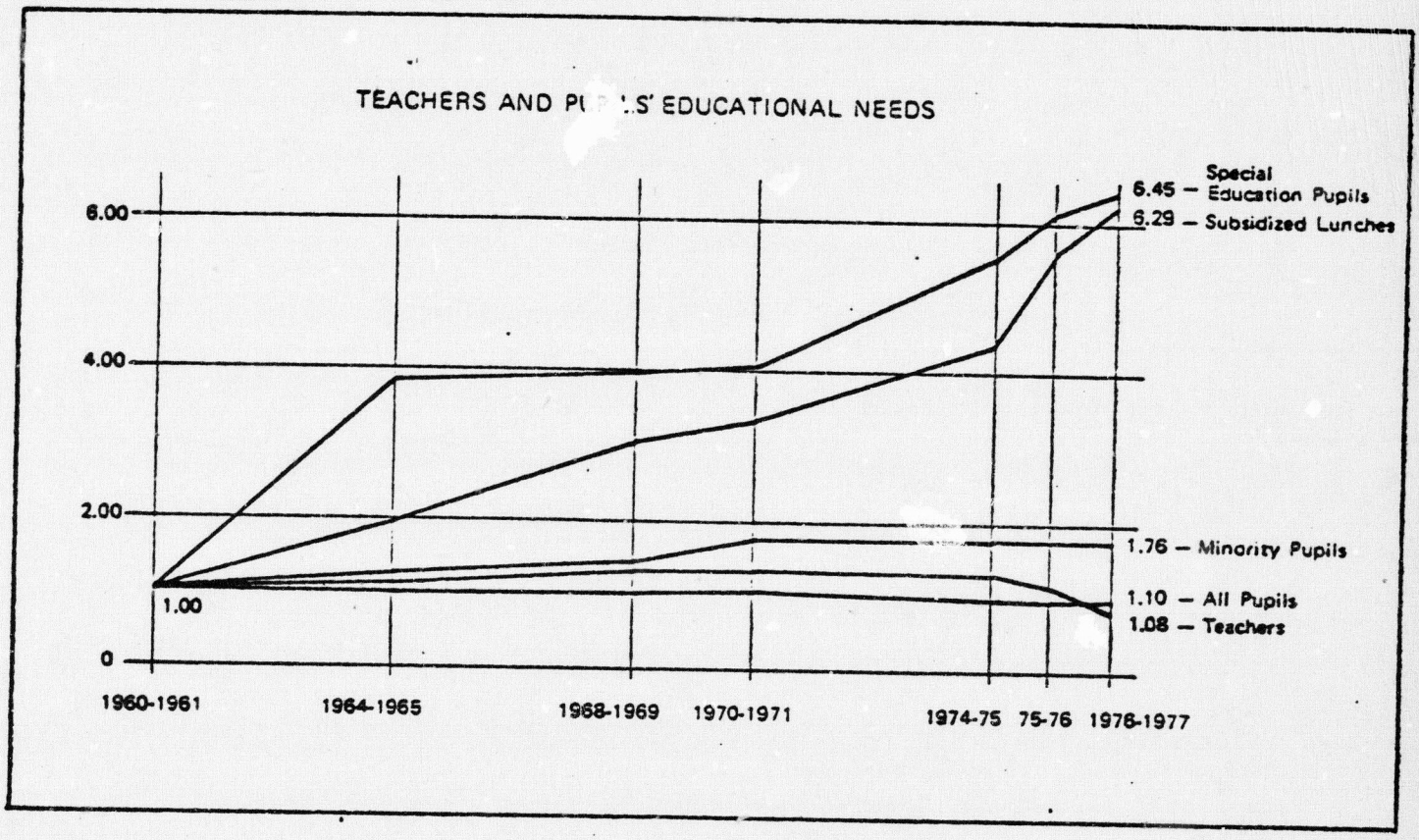
Compounding the severity of this year's layoffs, the Mayor's Financial Plan for 1976-1977 calls for firing at 5,300 more teachers and hundreds of other personnel:

- 2,000 teachers whose jobs this year were supported by the one-shot strike penalty cannot be retained next fall.
- 3,300 more teachers will have to be fired to meet the Mayor's $47 million tax levy cut and $11.9 million capital funds cut.

In addition, the Board of Education will be unable to restore the full school day to all elementary and junior high school pupils. Also, mandated increases must be absorbed within a smaller budget. For example, rising prices of supplies and rising costs of services mean the lower purchasing power of next year's dollar. Larger social security contributions and higher health insurance premiums must be paid out of "savings" generated by economies and cutbacks elsewhere.

Taking an historical view of pupil and staff levels in the New York City public schools, one can easily understand why the budget cuts represent such a serious retrogression. As the table and chart on the following page show, staffing levels increased progressively during the period 1960-1974 in order to meet higher enrollments and the special educational needs of a changing pupil population:

SCHOOL YEAR	PUPILS	TEACHERS PAID BY GENERAL FUNDS	PERCENT MINORITY PUPILS	SUBSIDIZED LUNCHES
1960-1961	986,679	39,300*	37%	99,300Δ
1964-1965	1,055,043	46,000*	45%	189,163
1968-1969	1,115,523	56,000*	54%	310,772
1970-1971	1,135,298	55,800*	57%	333,538
1974-1975	1,098,894	56,250**	65%	436,164
1975-1976	1,097,605	47,675**	65%Δ	550,000Δ
1976-1977	1,084,575Δ	42,300Δ	65%Δ	625,000Δ



The trends show that as the educational needs of pupils increased -- more handicapped, more poor, more black and hispanic -- the city has withdrawn its support for its public schools. Personnel layoffs in 1975-1976 have set the city school system back more than ten years - - back to an era in which education suffered because of an acute teacher shortage. The

*Estimated net budget positions, excluding accruals mandated by the Mayor.
**Payroll positions, June 1975 and March 1976.
ΔEstimated amounts.

retrogression in staff levels is further exacerbated because:

- There are now 100,000 more pupils.
- There are now over 40,000 pupils in special education programs, a 500% increase.
- Two-thirds of the pupils are from minority groups, a complete reversal of the ethnic mix.
- The number of pupils receiving subsidized lunches has more than quintupled, an indication of the increasing number of students with poverty backgrounds.

In other words, the Mayor's budget cuts will mean that these greater education needs of the public school pupils will be met with fewer and fewer resources.

The massive layoffs are all the more tragic because the individuals losing jobs are predominantly from minority groups. The last-hired, first-fired rule is setting the equal employment opportunity efforts of the public school system back a decade. For example, half of all black teachers have been laid off. In addition, those paraprofessionals (predominantly women from minority groups) who have recently elevated themselves to full status as regular teachers were among the first to be fired.

THE MAYOR'S OFFERS OF COMPROMISE

The Mayor, in his March 31, 1976, memorandum to all members of the State Legislature, offered the following compromises in lieu of the Stavisky-Goodman bill:

> "A law requiring that the Board of Education's share of the total controllable tax levy funds (including Federal and State revenue sharing) as set forth in the Financial Plan may not be reduced in any year beginning July 1, 1976, by a larger percent than the average reduction in such controllable tax levy funds."
>
> "A mandate, starting July 1, 1976, that the Board of Education's share of the total controllable tax levy funds (including Federal and State revenue sharing) as set forth in the Financial Plan may not be reduced below the average percentage of those funds appropriated to the Board in Fiscal year 1974, Fiscal year 1975, and Fiscal year 1976 (the latter as amended by the Financial Plan)."
>
> "In addition, a third approach was advanced to insure improved classroom instruction. This would serve as a mandate to the Board of Education requiring compliance with the Board of Regents State regulations calling for a 5 1/2 hour school day. This would have to be achieved within the existing and projected budget appropriations of the Board of Education."

The first two compromises deal with controllable tax levy, which is a possible basis for negotiation. However, there must be an agreement on a consistent set of definitions applied fairly to the City and Board of Education tax levy amounts. For example, the Mayor's compromises would permit the City to deduct uncontrollable public and medical assistance, charitable institutions subsidies, and transit subsidies, but they would not let the Board of Education deduct non-public school funds, transit subsidies or

medical-dental-health funds that are not controlled by the Board of Education. This is hardly fair.

The third compromise would require the Board of Education to restore the full school day within the present financial plan budget. This compromise would require the lay off of another 5,300 teachers and an increase in average class size by 10-12 pupils. Defying all logic, this is a compromise that the Mayor says will "insure improved classroom instruction."

In effect, the Mayor's "compromise" offers amount to nothing more than dressing up the proposed financial plan in different language. This will not change the layoffs or the dollar cuts or the service cuts.

THE BOARD OF EDUCATION'S PRIORITIES FOR FUNDS RESTORED BY THE STAVISKY-GOODMAN BILL

If the Stavisky-Goodman bill becomes law, the New York City Board of Education will allocate the restored funds for direct instructional services in the classroom.

- The 2,000 teachers, whose jobs this year were "saved" by the one-shot strike penalty, will continue to be supported.
- The full school day will be restored to pupils in elementary and junior high schools.
- Class size will be reduced at all grade levels.
- Instructional support services will be provided to teachers in the classroom.

All pupils will benefit from these restorations: "regular" pupils at all grade levels, pupils with special educational needs, pupils with emotionally

and physically handicapping conditions, non-English speaking pupils.

In an open letter (March 29, 1976) to Assemblyman Leonard P. Stavisky, Board President Isaiah E. Robinson and Chancellor Irving Anker guaranteed that:

> None of the monies which would be provided by the passage of the Stavisky-Goodman bill will be used to increase administrative overhead, nor to restore cuts already made in this area. In the past year, we have undertaken a vigorous program to cut the staff employed at central headquarters. In addition, we have also cut the amount of monies set aside for the administration of community school districts. Let me assure you, we will continue these efforts. We will concentrate our limited resources in the classroom, where they can best benefit the children of this city.

The New York City Board of Education, in executive session, voted unanimous support for this position.

UNDERSTANDING THE NEW YORK CITY BOARD OF EDUCATION'S BUDGET

In order to assess accurately the impact of budget cuts on the quality of public education in New York City, the budget itself must be understood. Some basic concepts and terms need to be defined and explained.

Each year, the Board of Education receives from the City a budget for running the schools. This budget is organized according to various programs. Each program is associated with a major educational or administrative responsibility, function, or task. The Board of Education's budget is presently broken down into the following programs:

1 - City Board of Education
2 - City General Administration
3 - Division of Personnel
4 - Division of Educational Planning and Support
5 - Division of High Schools
6 - Division of School Buildings
7 - Division of Business and Administration
9 - Centralized and Decentralized Reimbursable Programs
11 - Light, Heat and Power
12 - Debt Service
13 - Medical, Dental and Health Services
14 - Non-Public Schools
16 - Division of Special Education and Pupil Personnel Services
26 - Comprehensive Employment and Training Act, Title I
30 - Community District Instruction and Administration
31 - Community School District Affairs

Even though all of these programs are part of the Board of Education's budget, expenditure decisions associated with many of them are actually controlled by other governmental agencies and institutions. Depending on the primary locus of expenditure control, the programs can be re-arranged into the following four groups:

GROUP A - DIRECT BOARD OF EDUCATION PROGRAMS

1 - City Board of Education
2 - City General Administration
3 - Division of Personnel
4 - Division of Educational Planning and Support
5 - Division of High Schools
6 - Division of School Buildings
7 - Division of Business and Administration
16 - Division of Special Education and Pupil Personnel Services
30 - Community District Instruction and Administration
31 - Community School District Affairs

GROUP B - REIMBURSABLE STATE AND FEDERAL PROGRAMS

9 - Centralized and Decentralized Reimbursable Programs
26 - Comprehensive Employment and Training Act

GROUP C - SERVICES FOR NON-PUBLIC SCHOOLS

14 - Non-Public Schools

GROUP D - PROGRAMS MANAGED BY OTHER CITY AGENCIES

11 - Light, Heat and Power (Department of Public Works)
12 - Debt Service (Comptroller)
13 - Medical, Dental and Health Programs (Department of Health)

The Board of Education exercises very limited expenditure control over all programs listed in Groups B, C, and D. The situation is similar with regard to parts of the programs listed under Group A. Thus, DIRECT BOARD OF EDUCATION PROGRAMS can further be divided into two sub-groups:

GROUP A-1: FUNDS CONTROLLED BY BOARD DIRECT EDUCATIONAL PROGRAMS (including salaries and other than personnel service costs)

- Instruction.
- Administration and support services.

GROUP A-2: OBLIGATIONS OVER WHICH THE BOARD HAS LIMITED CONTROL

- Pensions for all employees working in direct educational programs.
- Fringe benefit payments for all employees working in direct educational programs.
- Transportation for public school pupils.
- Lunch programs for public school pupils.
- Custodial and building maintenance.
- Restricted funds (Mayor's approval required).

The Board of Education's budget program groups listed above are illustrated in Exhibit 1; in Exhibit 2 the Board's budget for fiscal year 1975-1976 is arranged to reflect these program groups.

Exhibit 1

BOARD OF EDUCATION BUDGET
PROGRAM GROUPS

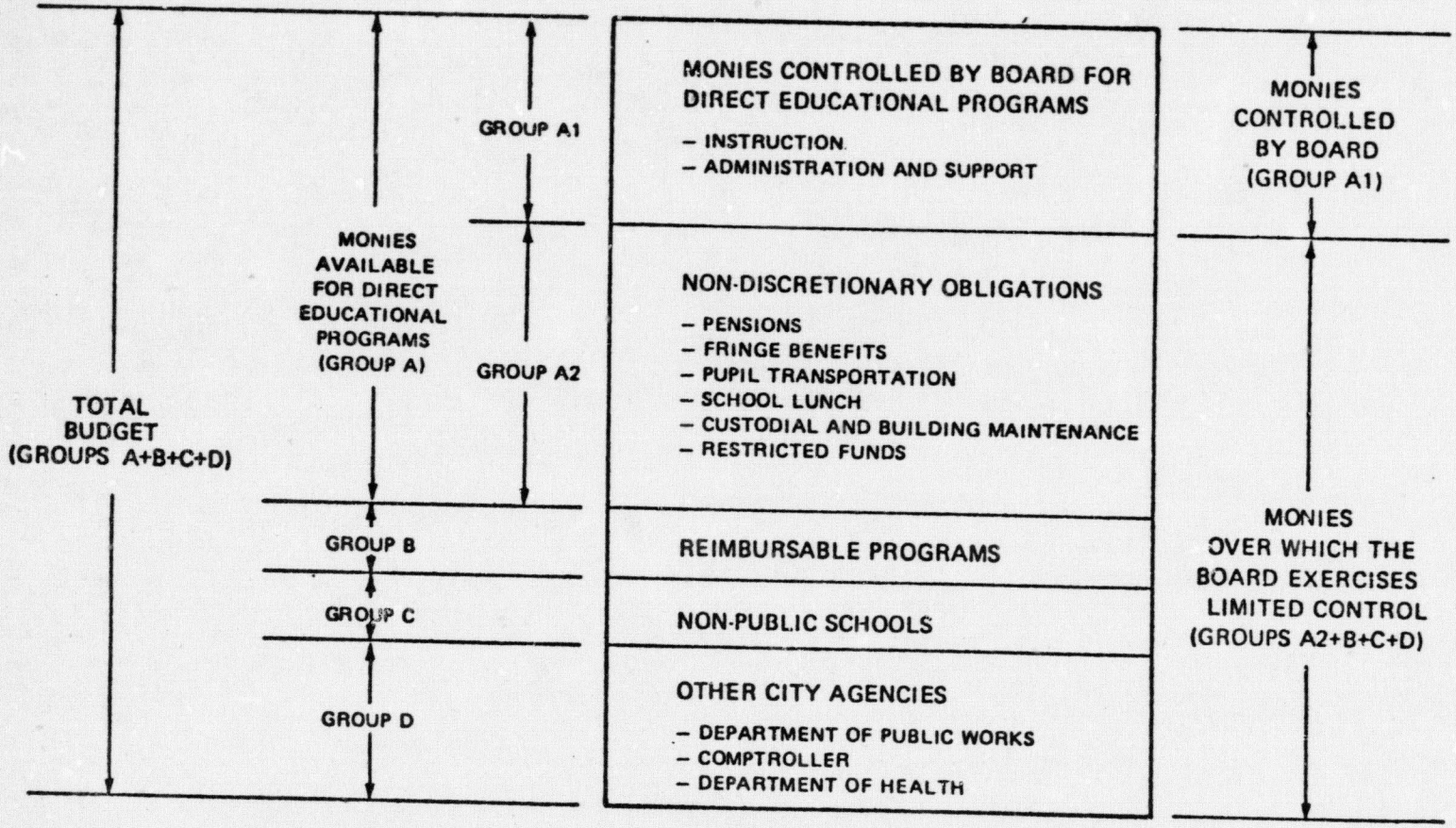


Exhibit 2

BOARD OF EDUCATION BUDGET: 1975-1976 (EM-136)

PROGRAM	GROUP A: MONIES AVAILABLE FOR DIRECT EDUCATIONAL PROGRAMS								GROUP B REIMBURSABLE PROGRAMS	GROUP C NON PUBLIC SCHOOLS	GROUP D OTHER CITY AGENCIES	TOTAL	PROGRAM
	GROUP A1: MONIES CONTROLLED BY BOARD FOR DIRECT EDUCATIONAL PROG.		GROUP A2: NON DISCRETIONARY OBLIGATIONS										
	INSTRUCTION	ADMINISTRATION AND SUPPORT	PENSIONS	FRINGE BENEFITS	PUPIL TRANSPORTATION	SCHOOL LUNCH	CUSTODIAL & BUILDING MAINTENANCE	RESTRICTED FUNDS					
1 City Board of Education	$ -	$ 1,490,068	$ 167,671	$ 69,104	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 1,726,843	1
2 City General Administration	-	8,848,743	751,076	561,553	-	-	-	-	-	-	-	10,161,372	2
3 Personnel	-	4,881,870	636,268	184,260	-	-	-	-	-	-	-	5,702,398	3
4 Educational Planning and Support	-	6,359,536	1,040,439	237,936	-	-	-	-	-	-	-	7,637,911	4
5 High Schools	314,864,463	-	140,164,550	41,955,671	37,113,389	23,022,547	38,401,861	20,529,748	-	-	-	616,052,239	5
6 School Buildings	-	-	1,426,654	1,294,795	-	-	28,265,100	553,515	-	-	-	31,540,064	6
7 Business & Administration	-	15,181,738	6,183,629	3,777,544	555,930	6,328,121	-	2,808,998	-	-	-	34,835,960	7
9 Centralized and Decentralized Reimbursable Programs	-	-	-	-	-	-	-	-	219,277,878	-	-	219,277,878	9
11 Light, Heat & Power	-	-	-	-	-	-	-	-	-	-	29,869,500	29,869,500	11
12 Debt Service	-	-	-	-	-	-	-	-	-	-	258,486,422	258,486,422	12
13 Medical, Dental and Health	-	-	-	-	-	-	-	-	-	-	10,500,000	10,500,000	13
14 Non-Public Schools	-	-	-	-	-	-	-	-	-	51,146,670	-	51,146,670	14
16 Special Education	123,493,593	-	5,248,544	10,974,389	49,064,717	-	-	-	-	-	-	188,781,243	16
23 Youthful Drug Abuser Prevention Program	-	-	-	-	-	-	-	-	14,800,000	-	-	14,800,000	23
24 Emergency Employment Act	-	-	-	-	-	-	-	-	11,589,753	-	-	11,589,753	24
25 Work Relief Program	-	-	-	-	-	-	-	-	308,258	-	-	308,258	25
26 Comprehensive Employment and Training Act	-	-	-	-	-	-	-	-	5,486,972	-	-	5,486,972	26
30 Community District Instruction & Administration	752,462,515	-	203,577,361	79,297,573	4,770	85,763,039	22,839,143	-	-	-	-	1,143,944,401	30
31 Community District Affairs	-	12,991,904	136,578	7,711,114	27,865,397	-	73,255,637	-	-	-	-	121,960,630	31
50-50 Unallocated Appropriation - Personal Service	-	-	-	-	-	-	-	28,336,598	-	-	-	28,336,598	50-50
TOTAL	$1,190,820,571	$49,753,859	$359,332,770	$146,063,959	$114,604,213	$115,113,707	$162,761,741	$52,228,859	$251,462,861	$51,146,670	$298,855,922	$2,792,145,112	

BUDGET TRENDS: 1970-1971 TO 1975-1976

The Board of Education's budget, nearly $2.8 billion in 1975-1976, has increased dramatically by 45% over the past six years (see Exhibits 3 and 4).

One might suppose that this budget increase places the Board in an advantageous financial position. However, this optimistic picture dims considerably if one analyzes where and by how much the increases have occurred.

The portion of the budget over which the Board exercises limited control has increased by an astounding 71%. Within this portion of the budget, various non-discretionary items and programs controlled by other agencies showed the following increases:

- Debt service costs grew 71%.
- Light, heat, and power costs grew 190%.
- Pension contributions grew 184%.
- Pupil transportation subsidies grew 120%.
- School lunch subsidies grew 203%.

Since the limited control portion of the budget has grown faster than the total, the inescapable conclusion is that the controlled portion must have grown at a slower rate; and it did, by 23%.

- Instruction grew by 23%.
- Administration and support services grew by 11%.

Exhibit 3

THE BOARD OF EDUCATION'S BUDGET: 1970-1971 TO 1975-1976

	1970-1971*	1971-1972*	1972-1973*	1973-1974*	1974-1975**	1975-1976***
GROUP A: MONIES AVAILABLE FOR DIRECT EDUCATIONAL PROGRAMS	$1,434,236,736	$1,494,424,347	$1,630,597,518	$1,978,665,446	$2,260,840,423	$2,190,679,659
GROUP A1: MONIES CONTROLLED BY BOARD FOR DIRECT EDUCATIONAL PROGRAMS	$1,012,324,587	$1,159,064,936	$1,169,960,621	$1,263,445,397	$1,424,509,648	$1,240,574,430
Instruction	967,364,603	1,109,417,145	1,117,653,088	1,211,379,826	1,366,013,718	1,190,820,571
Administration and Support	44,959,934	49,647,791	52,307,533	52,065,571	58,495,930	49,753,859
GROUP A2: NON-DISCRETIONARY OBLIGATIONS	$ 421,912,149	$ 335,359,411	$ 460,636,897	$ 715,220,049	$ 836,330,775	$ 950,105,229
Pensions	126,409,127	40,343,211	95,350,810	279,182,840	331,194,397	359,332,770
Fringe Benefits	78,492,155	71,742,193	100,246,541	121,498,416	133,646,146	146,063,939
Pupil Transportation	52,013,645	55,630,884	61,575,208	76,335,841	100,703,876	114,604,213
School Lunch	37,988,665	44,886,633	56,475,669	85,909,855	103,436,270	115,113,707
Custodial and Building Maintenance	127,008,557	122,756,490	139,406,450	148,074,449	167,334,506	162,761,741
Restricted Funds	-	-	7,582,219	3,218,648	15,580	52,228,659
GROUP B: REIMBURSABLE PROGRAMS	$ 277,631,572	$ 255,092,323	$ 268,238,567	$ 292,879,619	$ 291,606,444	$ 251,462,861
Centralized and Decentralized Programs	262,631,572	233,684,722	244,784,733	269,181,504	258,681,010	219,277,878
Other Programs	15,000,000	21,407,601	23,453,834	23,698,115	32,925,434	32,184,983
GROUP C: NON-PUBLIC SCHOOLS	$ 36,746,318	$ 35,989,348	$ 44,144,719	$ 51,643,887	$ 48,541,579	$ 51,146,670
Program 14 - Non-Public Schools	36,746,318	35,989,348	44,144,719	51,643,887	48,541,579	51,146,670
GROUP D: OTHER CITY AGENCIES	$ 172,608,258	$ 189,143,626	$ 223,103,893	$ 239,762,405	$ 265,292,381	$ 298,855,922
Program 11 - Light, Heat, Power	10,302,870	11,339,500	15,101,123	16,828,732	19,485,800	29,869,500
Program 12 - Debt Service	151,046,057	167,070,604	196,015,032	211,639,325	233,851,471	258,486,422
Program 13 - Medical, Dental, Health	11,259,331	10,733,522	11,987,738	11,294,348	11,955,110	10,500,000
SUB-TOTAL: MONIES OVER WHICH THE BOARD EXERCISES LIMITED CONTROL (GROUPS A2+B+C+D)	$ 908,898,297	$ 815,584,708	$ 996,124,076	$1,299,505,960	$1,441,771,179	$1,551,570,682
TOTAL BUDGET (GROUPS A+B+C+D)	$1,921,222,884	$1,974,649,644	$2,166,084,697	$2,562,951,357	$2,866,280,627	$2,792,145,112

*Budget at end of year.

**Budget at end of year, but excluding EM-320, which increases Group B.

***Budget as modified through EM-136, the Mayor's Executive cut-off for fiscal year 1976-1977.

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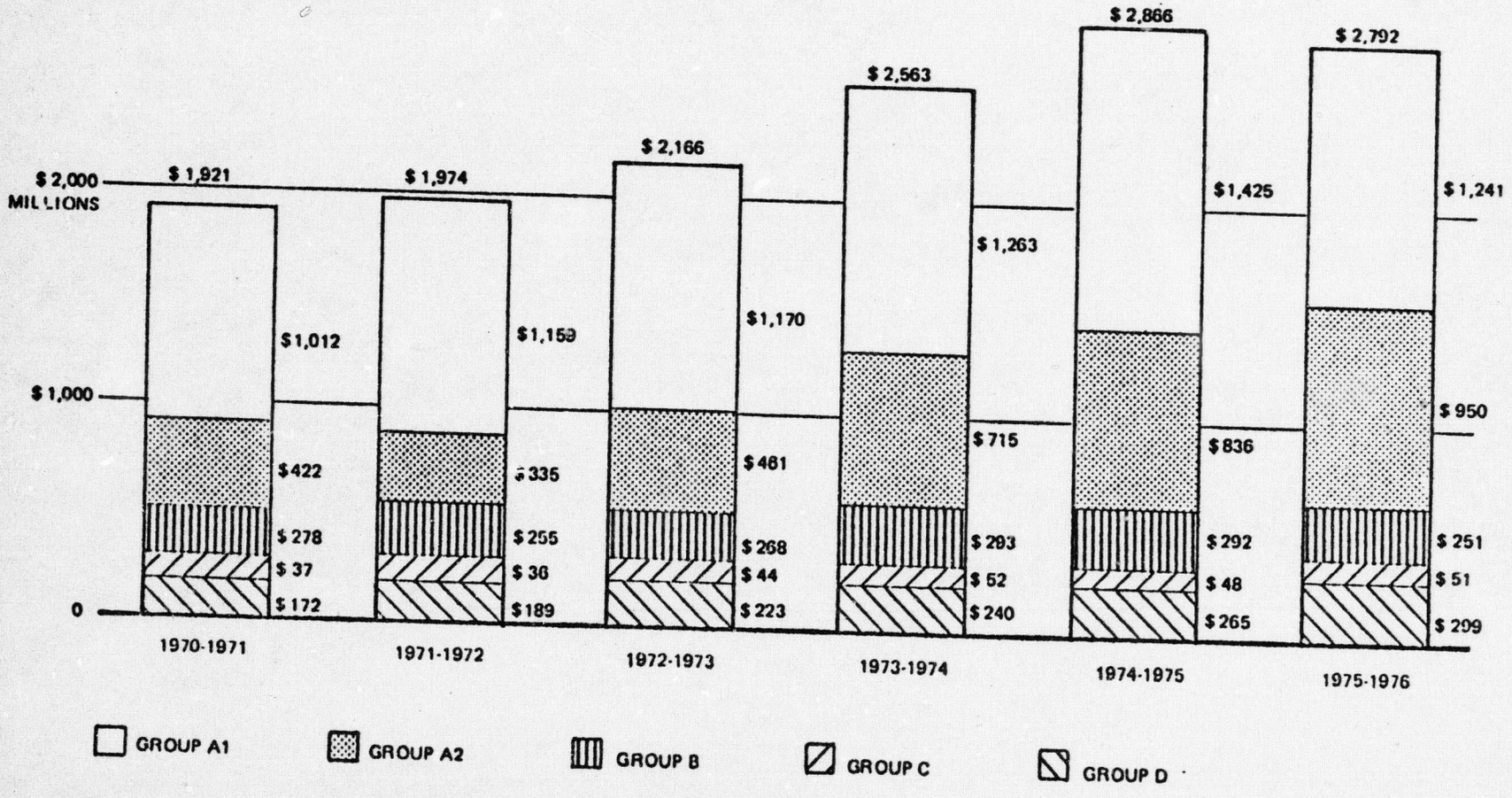
Exhibit 4

BOARD OF EDUCATION BUDGET
PROGRAM GROUPS
1970-1971 TO 1975-1976



One result of the growth rate disparity between the controlled and limited control portions of the budget is that the Board of Education now has discretion over less than half of its costs for the direct operation of public education programs (see Exhibit 5). Today, only 44¢ of every dollar in the budget is controlled by the Board for the direct operation of public educational programs (see Exhibit 6). The remaining 56¢ out of every dollar is largely controlled by other agencies.

COMPARING THE BOARD'S BUDGET FOR YEARS 1974-1975 AND 1975-1976

We can now turn to the question: How much has the Board of Education's budget been cut since last year? Having examined background information regarding budget structure and trends, one can intelligently compare the Board's budgets for fiscal years 1974-1975 and 1975-1976 (see Exhibits 7 and 8).

The first thing to note is that the total budget declined $74 million, a decrease of 2.6%. Keep in mind, however, that this net change in the budget is deceptively small because it does not account for the rate of inflation. In addition, the net change obscures important increases and decreases in selected portions of the budget.

Continuing past trends the portion of the budget over which the Board exercises limited control actually grew by $110 million, an increase of 7.6%. Even more alarming (and significant in terms of its impact on the day-to-day operation of the schools) is the $184 million decrease in that portion of the budget controlled by the Board for direct educational programs. This represents a startling 12.9% drop in funds allocated for instruction,

Exhibit 5

COMPARING THE BOARD OF EDUCATION'S CONTROLLED AND UNCONTROLLED BUDGET

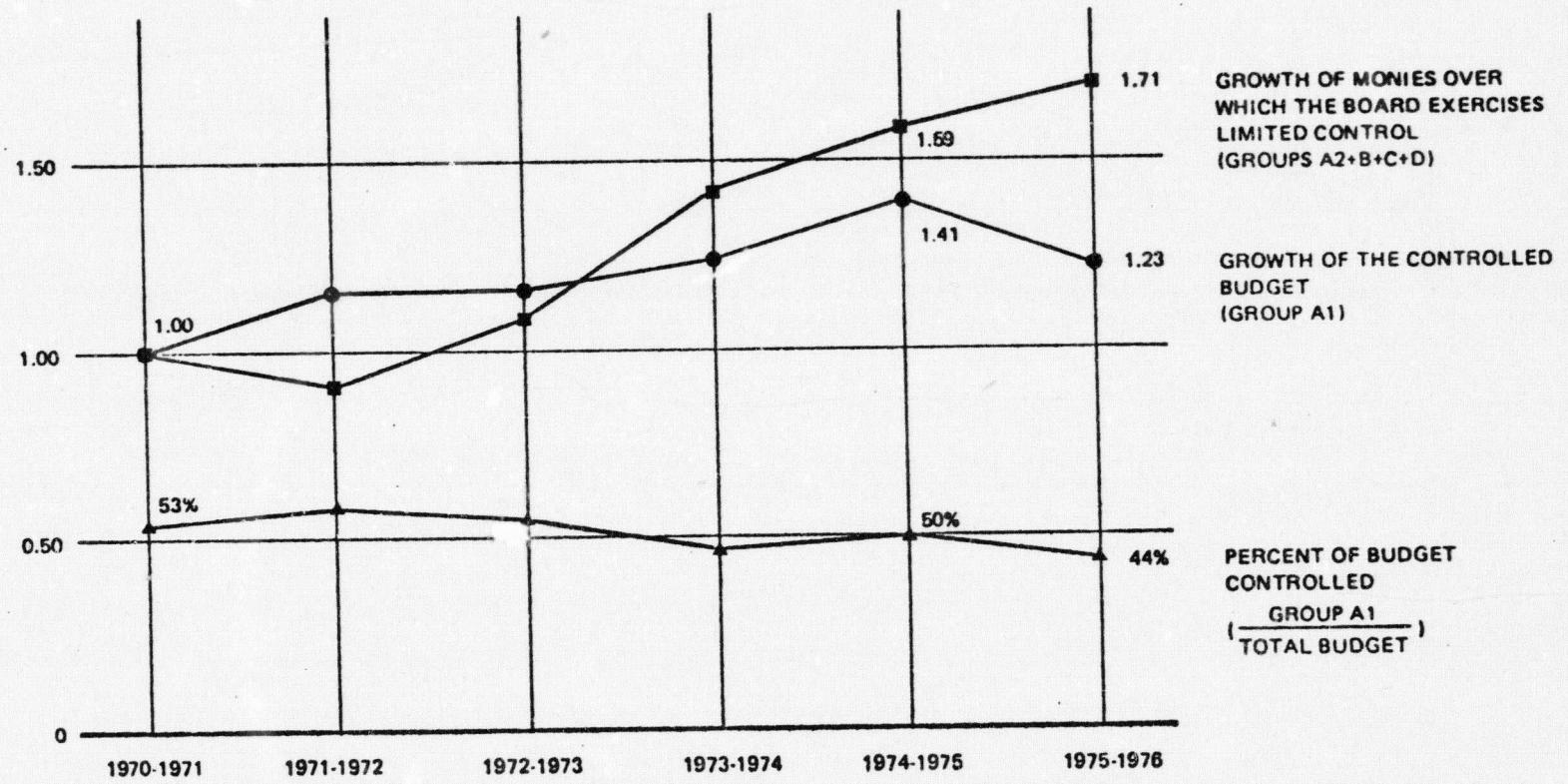


Exhibit 6

WHERE EACH EDUCATION DOLLAR GOES
$ 2,792,145,112
1975-1976

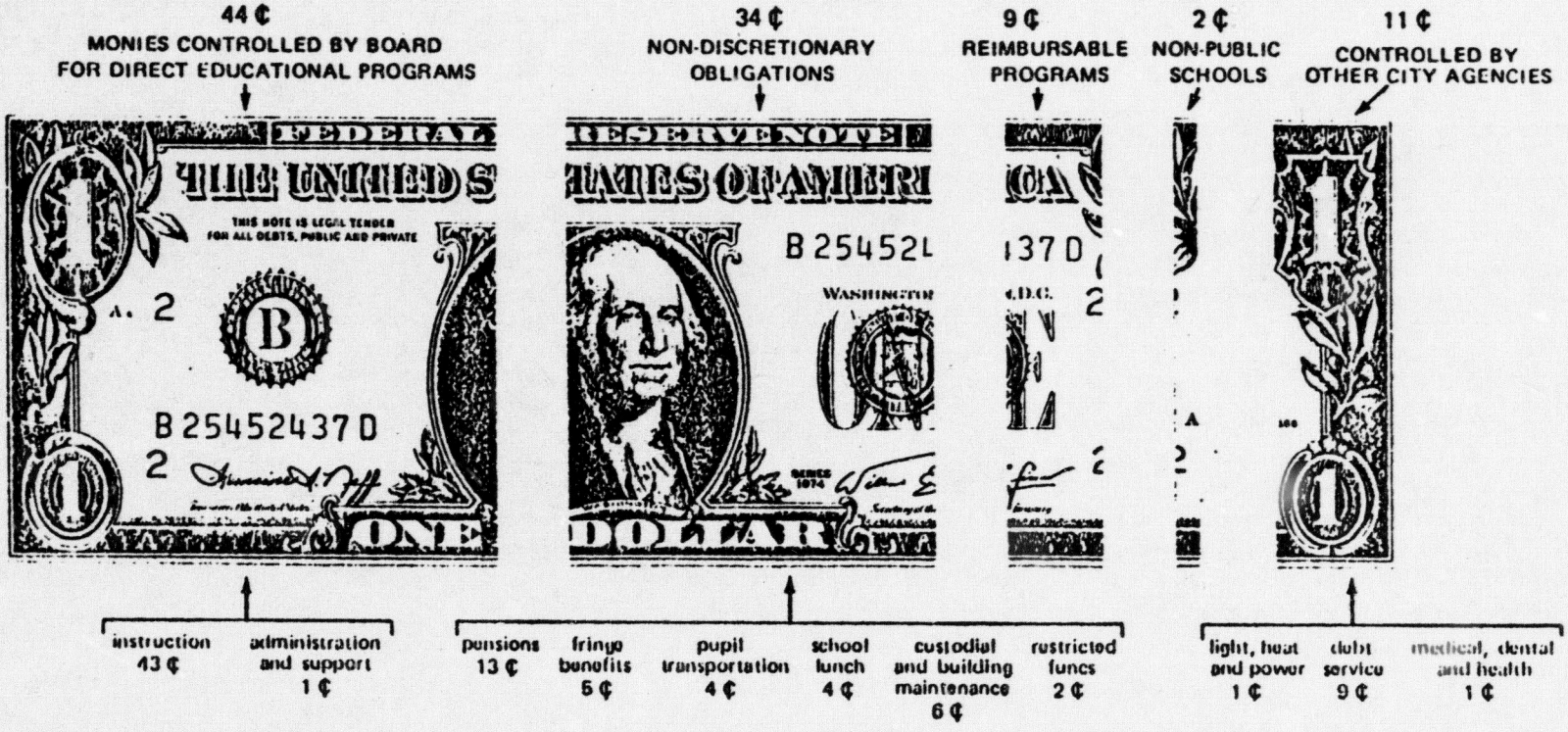


Exhibit 7

BOARD OF EDUCATION'S CONTROLLED AND UNCONTROLLED BUDGET

1974-1975 AND 1975-1976

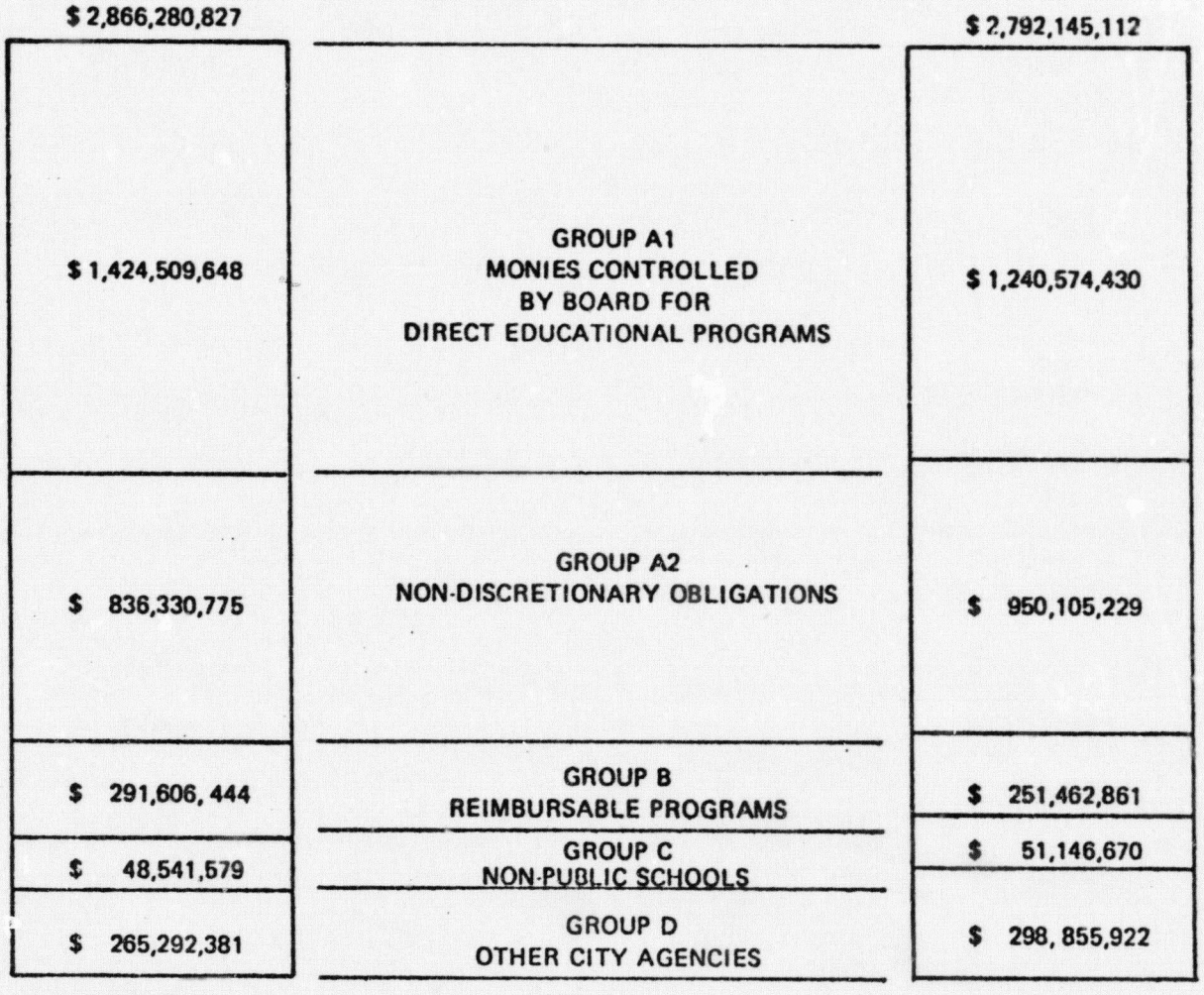
	1974-1975*	1975-1976**	CHANGE AMOUNT	CHANGE PERCENT
GROUP A: MONIES AVAILABLE FOR DIRECT EDUCATIONAL PROGRAMS	$2,260,840,423	$2,190,679,659	$- 70,160,764	- 3.10%
GROUP A1: MONIES CONTROLLED BY BOARD FOR DIRECT EDUCATIONAL PROGRAMS	$1,424,509,648	$1,240,574,430	$-183,935,218	-12.91%
Instruction	1,366,013,718	1,190,820,571	-175,193,147	-12.83
Administration and Support	58,495,930	49,753,859	- 8,742,071	-14.94
GROUP A2: NON-DISCRETIONARY OBLIGATIONS	$ 836,330,775	$ 950,105,229	$ 113,774,454	13.60%
Pensions	331,194,397	359,332,770	28,138,373	8.50
Fringe Benefits	133,646,146	146,063,939	12,417,793	9.29
Pupil Transportation	100,703,876	114,604,213	13,900,337	13.80
School Lunch	103,436,270	115,113,707	11,677,437	11.29
Custodial and Building Maintenance	167,334,506	162,761,741	- 4,572,765	- 2.73
Restricted Funds	15,580	52,228,859	52,213,279	-
GROUP B: REIMBURSABLE PROGRAMS	$ 291,606,444	$ 251,462,861	$- 40,143,583	-13.77%
Centralized and Decentralized Programs	258,681,010	219,277,878	- 39,403,132	-15.23
Other Programs	32,925,434	32,184,983	- 740,451	- 2.25
GROUP C: NON-PUBLIC SCHOOLS	$ 48,541,579	$ 51,146,670	$ 2,605,091	5.37%
Program 14 - Non-Public Schools	48,541,579	51,146,670	2,605,091	5.37
GROUP D: OTHER CITY AGENCIES	$ 265,292,381	$ 298,855,922	$ 33,563,541	12.65%
Program 11 - Light, Heat, Power	19,485,800	29,869,500	10,383,700	53.29
Program 12 - Debt Service	233,851,471	258,486,422	24,634,951	10.53
Program 13 - Medical, Dental, Health	11,955,110	10,500,000	- 1,455,110	-12.17
MONIES OVER WHICH THE BOARD EXERCISES LIMITED CONTROL (GROUPS A2+B+C+D)	$1,441,771,179	$1,551,570,682	$ 109,799,503	7.62%
TOTAL BUDGET (GROUPS A+B+C+D)	$2,866,280,627	$2,792,145,112	$- 74,135,715	- 2.59%

*Budget at end of year, but excluding EM-320, which increases Group B.

**Budget as modified through EM-136, the Mayor's Executive cut-off for fiscal year 1976-1977.

Exhibit 8

BOARD OF EDUCATION'S CONTROLLED AND UNCONTROLLED BUDGET 1974-1975 AND 1975-1976



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administration, and support services. The changes in the Board controlled portion of the budget are summarized below:

	(millions of dollars) 1974-1975	1975-1976	PERCENT CHANGE
Budget controlled by Board	$ 1,424.5	$ 1,240.6	-12.9%
Instruction	$ 1,366.0	$1,190.8	-12.8%
Administration and Support	$ 58.5	$ 49.8	-14.9%

A CLOSER LOOK AT ADMINISTRATION AND SUPPORT

As previous sections of this report make perfectly clear, the only controllable portions of the Board of Education's budget are represented by instruction, administration, and support services. Funds for "instruction," approximately 43% of the total budget, are allocated directly to community school districts, high schools, and special education programs for the handicapped.

Barely 1% of the Board of Education's total budget is allocated for "administration and support services." Funds for "administration" go to the Board of Education itself, the Office of the Chancellor, the Office of the Deputy Chancellor, and the Divisions of Personnel and Business Administration. Funds for "support services" are primarily allocated to the Division of Educational Planning and Support, the Division of Community School District Affairs, the Bureau of Child Guidance, and the Office of School Safety.

Although only 1¢ of every school dollar is now spent for "administration and support services," cuts in this portion of the budget have not been

spared at the expense of instruction. The table below lists some of these cuts:

ADMINISTRATION AND SUPPORT SERVICES	1975-1976 CUT
Office of the Deputy Chancellor	-19%
Administrative Personnel	-17%
Board of Examiners	-35%
Division of Educational Planning and Support	-39%
Bureau of Child Guidance	-12%
Central Zoning Unit	-31%
Board of Education	-14%
Office of Educational Performance and Accountability	-18%
Office of Elementary and Junior High School Instructional Support	-26%

Another dimension of the cuts in the bureaucracy at "110 Livingston" is the reduction in teachers assigned to central headquarters:

	JUNE 1975	MARCH 1976	CHANGE STAFF	CHANGE PERCENT
City Board of Education	0	0	0	0%
City General Administration	31	22	- 9	- 29
Personnel	39	18	- 21	- 54
Educational Planning and Support	87	36	- 51	- 59
School Buildings	1	0	- 1	-100
Business and Administration	6	5	- 1	- 17
Centralized District Activities	21	12	- 9	- 43
Community School District Affairs	23	14	- 9	- 39
	208	107	-101	- 49%

Half of the teachers at central headquarters have either been reassigned to schools or terminated.

In spite of a significant reduction in funds allocated for administration, numerous organization and operation improvement initiatives have been launched in an effort to manage the Board of Education's $2.8 billion budget:

- A comprehensive information system for integrating budget, financial, personnel, payroll, accounting data is being developed as part of the citywide system mandated by the Financial Emergency Act.
- The Office of the Auditor-General has been established to expand the scope of the old Bureau of Audit.
- The Division of Personnel has been reorganized to streamline numerous offices and bureaus.
- A District Business Management Team has been created which assists community school district business officers in managing their multi-million dollar budgets.
- The Division of Educational Planning and Support has been streamlined and consolidated to focus on the efficient delivery of services to schools.
- A comprehensive educational data base has been created that will permit the identification of more effective schools.

The City's current fiscal crisis makes the completion of these projects all the more vital so that every bit of economy and effectiveness can be squeezed out of the dwindling budget.

NYC BOARD OF EDUCATION'S TAX LEVY CUTS

The sources of support for the public schools of New York City are shown in Exhibit 9. The City of New York provides the greatest share: 60¢ of every dollar. The major source of City support is tax levy; these are hard tax dollars. This section focuses on the tax levy contribution because it is the part of the Board's budget that has been reduced disproportionately and unfairly by the City.

The disproportionate cut in New York City's public school services is shown in the following table which compares education's tax levy appropriations for the 1974-1975 and 1975-1976 school years (see Exhibit 10 for a detailed account of tax levy budget changes):

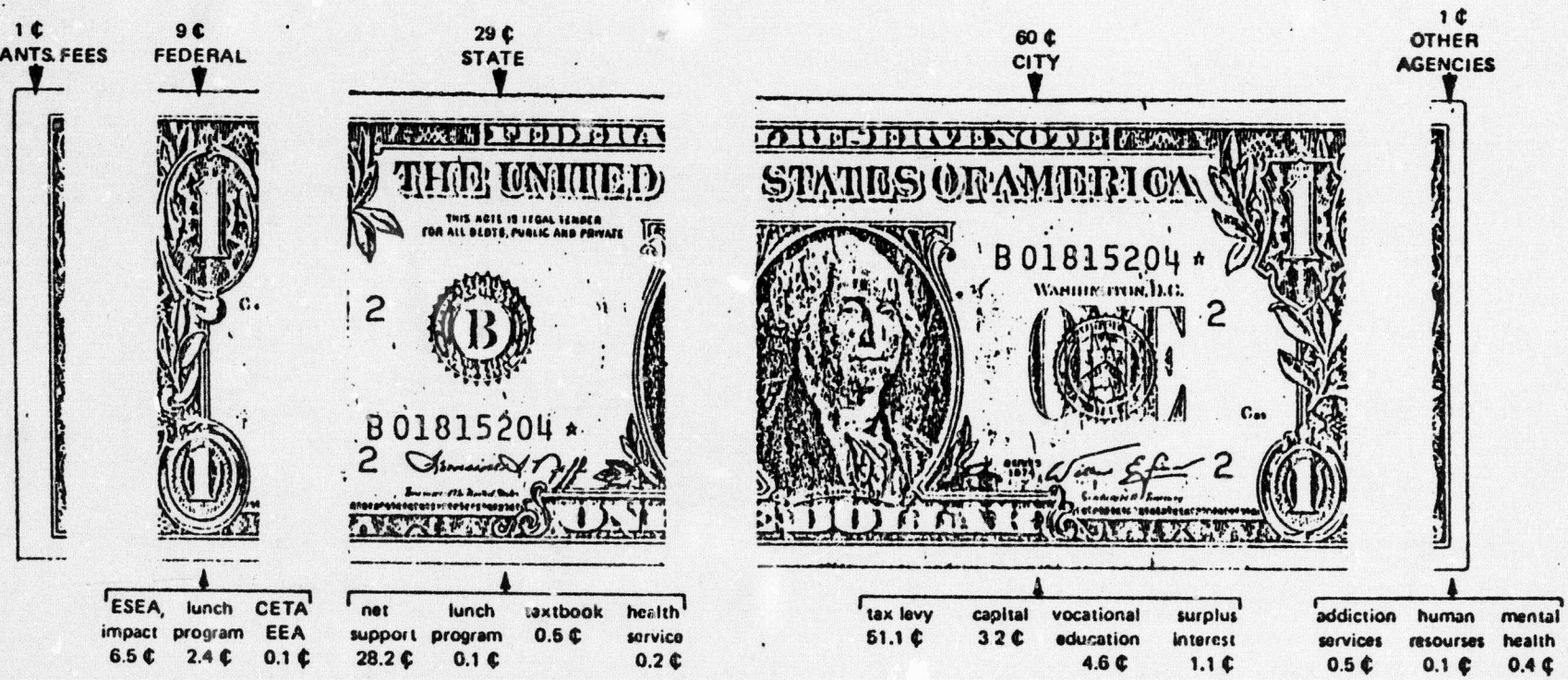
	(millions of dollars) 1974-1975	1975-1976	PERCENT CHANGE
Total City Tax Levy	$ 6,688.0	$ 7,414.2*	+10.9%
Board of Education Total Tax Levy	$ 1,367.0	$ 1,409.5	+ 3.1%
Controlled by Board	$ 464.5	$ 343.6	-26.0%
Limited Control	$ 902.5	$ 1,065.9	+18.1%

The Board of Education's total tax levy appropriation increased considerably less than the total City tax levy: 3.1% for education compared to 10.9% overall. The Board has very limited control over more than three-fourths of its total tax levy appropriation, and this portion increased 18.1%. Consequently, the tax levy portion that is controlled by the Board for the direct operation of public educational programs must actually have decreased; and it did, by 26.9%. This obviously discriminatory cut was exacerbated by the unfair treatment of the Bureau of the Budget in determining the Board's controllable tax levy base for the 4.5% cut announced in October 1975.

*The City of New York, Office of the Mayor, Office of Management and Budget, April 12, 1976.

Exhibit 9

WHERE EACH BOARD OF EDUCATION DOLLAR COMES FROM
1975-1976
$ 2,792,145,112



THE BOARD OF EDUCATION'S TAX LEVY BUDGET

1974-1975 AND 1975-1976

	1974-1975	1975-1976	CHANGE AMOUNT	CHANGE PERCENT
MONIES AVAILABLE FOR DIRECT EDUCATIONAL PROGRAMS	$1,074,845,577	$1,083,069,977	$ 8,224,400	0.8%
MONIES CONTROLLED BY BOARD FOR DIRECT EDUCATION PROGRAMS	$ 464,535,041	$ 343,594,129	$-120,940,912	-26.0%
NON-DISCRETIONARY OBLIGATIONS	$ 610,310,536	$ 739,475,848	$ 129,165,312	21.2%
Pensions	254,715,386	302,171,469	47,456,083	18.6
Fringe Benefits	119,868,425	126,399,836	6,531,411	5.4
Pupil Transportation	92,707,298	107,031,132	14,323,834	15.5
School Lunch	31,367,312	36,685,607	5,318,295	17.0
Custodial and Building Maintenance	111,652,115	115,512,460	3,860,345	3.5
Restricted Funds	0	51,675,344	51,675,344	NA
REIMBURSABLE PROGRAMS	$ 2,210,000	$ 25,000	$- 2,185,000	-98.9%
Centralized and Decentralized Programs	2,210,000	25,000	- 2,185,000	-98.9
Other Programs	0	0	0	0.0
NON-PUBLIC SCHOOLS	$ 33,095,852	$ 35,324,607	$ 2,228,755	6.7%
Program 14 - Non-Public Schools	33,095,852	35,324,607	2,228,755	6.7
OTHER CITY AGENCIES	$ 256,814,826	$ 291,105,922	$ 34,291,096	13.4%
Program 11 - Light, Heat, Power	19,485,800	29,869,500	10,383,700	53.3
Program 12 - Debt Service	231,351,471	255,986,422	24,634,951	10.6
Program 13 - Medical, Dental, Health	5,977,555	5,250,000	- 727,555	-12.2
SUB-TOTAL: MONIES OVER WHICH THE BOARD EXERCISES LIMITED CONTROL	$ 902,431,214	$1,065,931,377	$ 163,500,163	18.1%
TOTAL TAX LEVY BUDGET	$1,366,966,255	$1,409,525,506	$ 42,559,251	3.1%

AREAS OF LIMITED CONTROL CLAIM 75% OF TAX LEVY BUDGET

The Bureau of the Budget's definition of "controllable tax levy" excludes only debt service and pensions. This definition is unfair because it is too narrow. Unlike most city agencies, the Board of Education's budget includes tax levy amounts that are subject to very marginal control by the Board. These items total $381.37 million:

- $29.87M for light, heat and power for school buildings. This is our Consolidated Edison bill, which is assigned to us by the Department of Public Works. The Con Ed. bills of other agencies are included in the Municipal Services Administration's budget. Defining this item as controllable inflated our base and unfairly enlarged our cut.

- $5.25M for the school health program. These medical, dental and health services are mandated by State law, and the Department of Health manages the program.

- $35.32M for non-public schools. State law mandates speech improvement, attendance and pupil transportation services for non-public school pupils. A subsidy for the Transit Authority is part of the pupil transportation cost. Support for the Fashion Institute of Technology, and a community college operating under a program of the State University of New York, is included in this amount.

- $0.02M for required matching support of federal and state reimbursable programs.

$107.03M for pupil transportation. State law mandates subsidized transportation for pupils living beyond specified distances from school. It is city policy to subsidize pupils living within these specified distances. A subsidy for the Transit Authority is included in this item.

- $36.69M for school lunch. Federal and State laws mandate subsidized meals for low income children. Most of this tax levy amount is for matching funds.

- $115.51M for custodial and building maintenance. State and City health and fire codes must be met. The Board exercises marginal control over this item because there are fixed costs associated with cleaning and maintaining a school building. Other agencies' buildings are cleaned and maintained by the Municipal Services Agencies. Defining this item as controllable inflated our base and unjustly enlarged our cut.

- $51.68M in restricted funds. Monies set aside for collective bargaining cannot be scheduled without the Mayor's approval. The October 1975 cuts are included here as frozen funds.

Fringe benefits are another large item that is largely not controlled by the Board. Federal Social Security mandates the employer's contributions; employee health insurance rates are negotiated by the City Department of Personnel.

Although it is true that the Board of Education exercises limited control over some of the items listed above, most of the costs associated with these items are controlled by other institutions.

Here is one clear-cut example of the unfair treatment accorded to the Board of Education. The $29.87 million tax levy for light, heat, and power was included in the base that had to be cut from the Board's budget. The budgets of the Police and Fire Departments do not include these costs; their light, heat, and power costs are included in the Municipal Services Administration's Budget. The Police and Fire Departments took no cut against their Con. Ed. bills, but the Board of Education did. There is no way in which the Board of Education can significantly reduce its Con. Ed. payment by $1.34 million (4.5% of $29.87 million) so the Board is forced to cut education programs instead. Is this fair?

THE 1975-1977 BOARD-UFT CONTRACT*

The 1975-1977 contract between the New York City Board of Education and the United Federation of Teachers contains new costs totalling $41.2 million in tax levy for 1975-1976. This amount is within the $43.8 million set aside by the Mayor for new UFT collective bargaining costs.

PROVISION		1975-1976 COST TAX LEVY	1975-1976 COST REIMBURSABLE	1976-1977 COST TAX LEVY	1976-1977 COST REIMBURSABLE
Longevity	Cost	$23,556,627	$1,924,248	$34,294,287	$2,735,901
	Members	27,040	2,188	30,359	2,450
Cost-of-Living	Cost	15,188,400	1,836,900	15,188,400	1,836,900
	Members	50,628	6,123	50,628	6,123
Welfare Fund	Cost	1,898,555	229,613	4,429,950	535,763
	Members	50,628	6,123	50,628	6,123
Employees Laid Off	Cost	536,724	53,672	0	0
	Members	5,262	526	0	0
Pension Costs	Cost	0	0	0	0
	Members	50,628	6,123	50,628	6,123
TOTAL	Cost	$41,180,306	$4,044,433	$53,912,637	$5,108,564
	Members	50,628	6,123	50,628	6,123
GRAND TOTAL	Cost	$45,224,739		$59,021,201	
	Members	56,751		56,751	

The longevity increases, the most significant part of the new costs associated with the contract, are explained below. The cost-of-living adjustment (COLA) is a one-time $300 payment; there is no agreement for a COLA in 1976-1977, but if there were an agreement, the amount would be the same. The union welfare fund amount supports a $50 annual increase

*This section summarizes a detailed cost analysis prepared in October 1975 and submitted to the Emergency Financial Control Board and the Special Deputy State Comptroller for New York City.

each year for each member. Health coverage and welfare fund payments for "laid off employees" are extended for 45 more days. Pension costs (increases for present employees and decreases resulting from this year's layoffs) will not show up until fiscal year 1977-1978. This time-lag is a result of state legislation which has allowed the City to fall two years behind in financing its pension obligations.

Longevity increases are payable to UFT members who, as of October 1, 1975, either have 10+ years of service or 15+ years of service in the New York City school system. For these teachers, who make up half of the UFT membership, the longevity increases are $750 and $1,500 respectively. Under the City's Financial Plan, payment of the increase is deferred for one year until October 1, 1976.

The teachers eligible for the longevity increases are those at the maximum step (8B) of the 16 step salary schedule. Without the longevity increase, these teachers would have had their salaries frozen for three years (as opposed to those teachers on lower steps who have received their step increments at least for this year). Even with their longevity increase, these teachers are rapidly falling behind the cost-of-living. We will trace the salary history and future of some teachers to see how they fare against the consumer price index (see Exhibits 11 and 12).

EXHIBIT II

SALARY HISTORY AND FUTURE* OF TEACHERS ON SCHEDULE C6PD

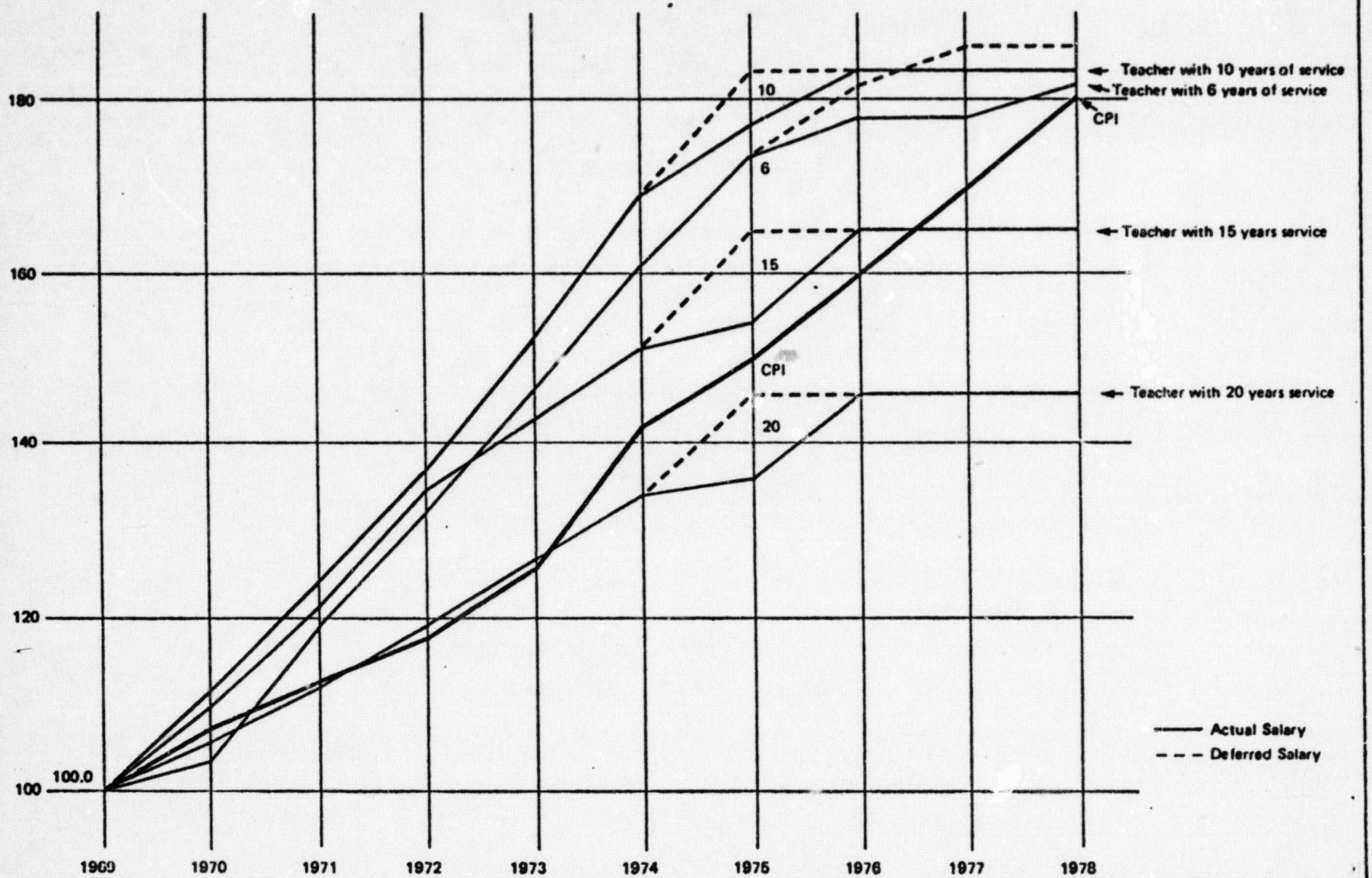
	YEARS OF SERVICE AS OF OCTOBER 1, 1975				
OCTOBER 1	6	10	15	20	NY-NENJ OCTOBER CPI**
1969	$10,950	$11,650	$13,400	$15,100	112.7
1970	11,450	12,850	14,600	16,000	121.2
1971	13,100	14,500	16,250	16,950	127.5
1972	14,450	16,050	18,100	18,100	133.2
1973	16,000	17,800	19,250	19,250	143.1
1974	17,700	19,700	20,350	20,350	160.2
1975	19,000	20,650	20,650	20,650	170.2
1976	19,500	21,400	22,150	22,150	180.7
1977	19,500	21,400	22,150	22,150	191.5
1978	20,000	21,400	22,150	22,150	203.2

*The salary amounts for October 1, 1975, and after include a $300 cost-of-living adjustment eventhough the 1975-1977 Board-UFT agreement has a COLA commitment for only 1975.

**The consumer price index projections for 1976, 1977 and 1978 are based on annual increases of 6.3%, 6.0% and 6.0%, which are the assumptions for the U.S. Budget for fiscal year 1977.

Exhibit 12

SALARY INCREASES OF TEACHERS ON SCHEDULE C6PD
(YEARS OF SERVICE AS OF OCTOBER 1, 1975)



As Exhibit 12 demonstrates, teachers with 20 years of service as of October 1, 1975, have kept even with the cost-of-living, but only up until 1973. After that, the CPI shot up, while salaries leveled off. The deferred longevity increase helps some, but these teachers are still far behind the rise in their cost-of-living. Teachers with 15 or more years of service have fared better in the past, but they will fall behind the CPI. By 1978, the CPI will have caught up with the salaries of teachers with 10 or more years of service.

Teachers with fewer than 10 years of service as of October 1, 1975, are not eligible for the longevity increase. However, most of them will receive step increments this year, but not for the next two years; their step increment will resume in 1978. These wage freezes, which are part of the City's Financial Plan, will permit the CPI to pass their salaries.

In summary, the 1975-1977 Board-UFT agreement and the City's Financial Plan will hold down teacher salary increases for this year and the next two years. Compared against their cost-of-living, the old-timers will fare poorly, while younger teachers will end up barely even.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOSTON M. CHANCE, LOUIS C. MERCADO et al.,

Plaintiffs

-against-

THE BOARD OF EXAMINERS, et al.,

Defendants

AFFIDAVIT

70 Civ. 4141

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

ROBERT G. OWENS, being duly sworn, deposes and says:

1. I am a Professor of Education in the School of Education at Brooklyn College of the City University of New York, where I have taught Educational Administration since 1965 and was chairman of the graduate program in Educational Administration from 1968 to 1974. Prior to joining the Brooklyn College faculty, I was Assistant Professor of Educational Administration at the State University of New York at Buffalo and, prior to that, was a school principal in various school districts of Connecticut and New Hampshire for 18 years.

2. I am author of a book widely used in university programs for school administrators called Organizational Behavior in Schools (Prentice-Hall, 1970) and senior author of Administering Change in Schools (Prentice-Hall, 1976). I am also author of numerous papers and articles published in scholarly journals which deal with the application of social and behavioral sciences to school administration and supervision. I have had wide experience as a consultant in New York City and in other school districts in improving the effectiveness of administrators and supervisors. I am very

familiar with the problems of supervising and administering schools in New York City and have, on a number of occasions, served as Assistant Examiner in examinations for supervisors.

3. Pursuant to a request of the Board of Education, and as required by the March, 1975, Plan for Supervisor Selection, I carefully reviewed the job analyses prepared by the American Institutes for Research. My statement based on that review is set forth in letters dated August 16, 1975, and September 8, 1975, and are appended to this affidavit.

4. I submit this affidavit in support of the Board of Education's motion to modify the Plan contained in this Court's March 25, 1975, Order (hereinafter "Original Plan").

5. In my judgment, the American Institutes for Research (AIR) job analyses, which I have carefully reviewed and studied, do not establish a basis for non-discriminatory job-related supervisory examinations. Nor do the recommendations of AIR offer a prototype method that would be useful in conducting future job analyses upon which to establish non-discriminatory, job-related supervisory examinations.

6. An important flaw in the AIR job analyses is that they are not relevant to a school system, such as in New York City, which is characterized by rapid change. Because the analyses depend so heavily upon present incumbents in supervisory positions for data, they are remarkably present-oriented. This approach, in a fast-changing situation, tends to produce analyses that may be valid today but are likely to be irrelevant in a few months or a year.

7. In addition, the AIR job analyses are based upon data from an undifferentiated group of incumbent school supervisors, rather than data from supervisors whose superior on-the-job performance has been established in some credible way.

8. Another major flaw in the AIR job analyses is that no apparent effort was made to obtain data from teachers as to the kinds of supervisory behavior that are most effective.

Thus the experience of teachers as the supposed beneficieries of the supervisory behavior reported by the incumbents is ignored. Yet it is well known that effective supervisory behavior is, by definition, behavior which is accepted and supported by subordinates who believe it to be effective.

9. Further, the AIR job analyses ignored relevant research literature. For example, the growing research literature reporting nationwide efforts to apply performance-based approaches to supervisor certification is not mentioned. Thus, practical scholarly knowledge concerning the difficulty of identifying, describing, and measuring discrete behavioral and attitudinal competencies is ignored in the AIR document.

10. Further, the study upon which the job analyses are based does not assure that the perspectives of minorities and recently-employed personnel are fully represented in the job analyses. Because representation of minorities and recent appointees to supervisory positions in the system is still small, the method of sampling used makes it highly likely that the data from self-reports of incumbents is systematically biased in terms of inadequately representing minorities and recent appointees. Probable retrenchment in the forseeable future may well heighten this problem as recently-appointed supervisors may be excessed from positions.

11. Aside from technical difficulties, the net effect of using the AIR job analyses would be to perpetuate the values, insights, and performance of the existing system at a time when the schools are called upon to be responsive to the forces of change. While the concept of job-relatedness has unquestionable merit in this matter, it is crucially important that the concept must not be interpreted to mean "related to the job as it has been performed in the past." Rather, care must be exercised to understand it to mean "related to the job as it ought to be performed at the time of appointment to position." Overall, it is the latter

concept that is missing from the AIR job analyses. The result is static job analyses based upon historical data for a school system that needs supervisors competent to deal effectively with the demands of the future in a dynamically changing environment. Thus, where the goal is to change the system to make it non-discriminatory and reflective of a changing society, job analyses as carried out by AIR at best have little relevance as they focus on the past and have no predictive value.

12. Because of the inadequacies in the AIR job analyses which have been described above, and because it is difficult to utilize any job analysis as a basis for pre-service examination in a school system undergoing such rapid change as the City School District of New York, I submit that the Board of Education properly rejected these analyses and, further, that their modified plan for the selection of supervisors should be adopted.

13. Recently implemented action of the New York State Board of Regents and the State Education Department requires that every university program registered for the certification of supervisors and administrators in the State of New York be based upon the assessed performance of individuals in certain explicitly-stated competencies. Each university faculty in educational administration has developed, collaboratively with practicing school supervisors and administrators, those competencies which should be attained, the criteria for assessing performance of individuals in the stated areas of competence, and ways of conducting performance assessment. In view of the prodigious work which has been done along these lines in New York City collegiate institutions, as well as in other colleges throughout the State, it is surprising and inappropriate that the proposals of the Board of Examiners presently before this Court totally ignore the very relevant thinking and work which has been done. A

powerful factor supporting the Board of Education's modified plan is that it is very much in harmony with, and supportive of, the best contemporary thought concerning assessment of a supervisor's qualifications for appointment and his/her performance on the job.

14. The Board of Education's modified plan recognizes the current thought that performance evaluation rather than structured examinations is a preferable approach to testing competence in supervision. Aside from meeting New York State and City Board of Education experience and training requirements, the basis of any new licensing procedure should be actual performance on the job. The Board of Education's proposed modified plan correctly reflects an understanding that evaluation of performance on the job is a much better method of determining who can do a job well than pre-job tests.

15. I have studied the Chancellor's Performance Planning and Evaluation Report form, a copy of which is appended to this affidavit. This is currently used by appointing authorities to evaluate a supervisor's on-the-job performance, and I believe it is an excellent device for assuring that evaluations are based upon uniform standards and actual performance on the job. Moreover, it seems clear that the modified plan--which provides for evaluation of supervisors' performance by the appointing authority rather than the Board of Examiners--is superior because it fixes responsibility where it belongs: upon the people in the school situation who have first-hand knowledge required to judge facts and events necessary for evaluation. There is no educational justification for having the Board of Examiners intrude in this evaluation process. The very things that are most crucial in a supervisor's job are the things which the job analyses did not define and which structured examinations cannot test (e.g., behavioral manifestations of

such things as effective leadership, creativity, quality of interpersonal skills). 867a

15. In sum, for the reasons stated above, I believe that the modified plan proposed by the Board of Education should be substituted for the Original Plan. The modified plan eliminates the need for the incredibly complex, expensive, and time-consuming testing procedures proposed in Step 1 of the Original Plan. Moreover, the Original Plan offers little probability of producing a constitutional, non-discriminatory job-related system for selecting school supervisors. The modified plan is compatible with the best contemporary performance-based approaches to the problem which is at issue in the instant matter. It is the approach which appears to be most workable, practical, cost-effective, and responsive to the changing environment which characterizes the New York City schools.

ROBERT G. OWENS

Sworn to me this
26th day of May, 1967

GAYLE [illegible] RUFORD Gayle A. Rulford
Notary P[illegible] New York
Qualifi[illegible] County
Commission Expires [illegible]ch 30, 1972

Transcript of Hearing before Judge Pollack,
dated June 1, 1976

LEGAL

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

BOSTON M. CHANCE et al.,

Plaintiffs,

vs.

THE BOARD OF EXAMINERS and THE BOARD OF EDUCATION OF THE CITY OF NEW YORK et al.,

Defendants.

70 Civil 4141

New York, N. Y.

June 1, 1976 - 10:30 a.m.

Before

HON. MILTON POLLACK,

District Judge.

APPEARANCES:

GEORGE COOPER, Esq.,
ELIZABETH B. DUBOIS, Esq., and
JEANNE R. SILVER, Esq.,
Attorneys for the Plaintiffs

W. BERNARD RICHLAND, Esq.,
Corporation Counsel of the City of New York
Attorney for the Board of Education
DEBORAH ROTHMAN, Esq.,
Assistant Corporation Counsel

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, Esqs.,
Attorneys for Board of Examiners
SAUL Z. COHEN, Esq., and
HOWARD JACOBSON, Esq., of Counsel

THE COURT: Perhaps it will shorten the discussion this morning -- and I don't mean to curtail it; only to focus attention on some problems that may have a useful effect -- if I say these things:

As I presently understand the papers, Step 1 of the proposed plan is really not a change from Step 1 of the judgment plan, except that it is not clear from the papers whether Step 1 involved merely a subjective approach and a mechanical task, such as assigning points for the number of years of teaching experience and the number of credits for post-graduate education and so forth.

So that would have to be clarified, but, essentially, as I understand it, there is nothing that deviates from the general purpose and effect of the old Step 1.

Step 2: there is a transfer of the examination purpose and the procedure from the examiners to the Board, and the law seems to be that it is the examiners who should function rather than the Board.

Now, apart from that, as I understand the law, a prior judgment is subject to modification, which is a euphemistic word, really, providing that it really is not a modification but stays within the same framework of what was intended by the judgment in dealing with the modification.

The Board has attempted to show that a modification

has been made necessary by a serious and unforeseen change of circumstances, but the legal standard does not require such proof for the type of thing that is being proposed as a "modification" of the 1975 judgment -- if, indeed, the new is really the same as the old in substance and effect.

Now, with those notions before you, I would like to find out from the examiners whether they agree that Step 1 really is the same as old Step 1 except in better form.

MR. COHEN: Your Honor, I must respectfully disagree most strenuously. Not only is it not the same and not only is it different, not merely technically and formally, but the entire concept of Step 1 as proposed by the Board of Education in contrast to the Step 1 of the judgment plan that is incorporated in the judgment embodies a totally different concept.

The Step 1 that is --

THE COURT: I heard those words. Explain it to me.

MR. COHEN: All right. Step 1 of the plan that is embodied in the judgment is an examination. It is an examination now known as an assessment type of examination, where various qualities that are to be tested for are examined through a variety of kinds of tests, including written tests or simulation tests, or a variety of tests, and a determination is made by the examiner as to whether the candidate in

effect has passed the exam.

THE COURT: What is the difference in the new plan?

MR. COHEN: The new plan has no test. The new plan says, "We are going to take the State accreditation requirements that said you have to have a certain number of college credits; you have to have had certain experience; you have to have had certain other" --

THE COURT: You don't think that is an examination of qualifications?

MR. COHEN: No; that is an examination of qualifications in the sense that it determines whether you are qualified to take the exam, but that is certainly not the examination that is required by the State, by State law. That is not the examination -- one of the things usually --

THE COURT: Wait a minute. Don't get off that. Don't run away from that too fast, because you still have not persuaded me that the new Step 1 is not an examination.

I don't think that you have --

MR. COHEN: There is no standard for disqualifying anybody other than for the board to perform the clerical function, other than to say, "Yes, you have the college degree; no, you don't have the college degree; yes, you have the two credits in Education; no; you do not. Your health certificate is wrong or is right."

There is no standard that the Board of Examiners can follow. It is not exercising any judgment whatsoever of a testing character. It is not examining any qualities to determine whether or not those duties which have been established by the Board of Education as being involved in the job are observed, whether the candidate possesses the qualities necessary to perform that job.

THE COURT: How about the written essay examination?

MR. COHEN: The written essay is exactly -- we are going back exactly to what was the subject of challenge when this case first started, in 1970. There are no standards.

THE COURT: What was your position at that time?

MR. COHEN: At that time our position was that the kind of examination we then gave met the constitutional requirements. The Court said it did not, for reasons which -- ironically to be arguing again now -- are amazing. That it did not is because we did not have proper job analyses, and the questions on the written exam were not properly job related.

THE COURT: Suppose you have essays, essay examinations that are properly job related and the job relationship is determined by the new method, which the expert says is a sounder and more feasible and viable and workable method of arriving at these things.

MR. COHEN: Your Honor, you know they submitted an affidavit of one expert. You know, we had eleven experts.

THE COURT: That is an interesting fact, but it diverts me from my question.

MR. COHEN: There is no doubt whatsoever that many plans could be developed that would meet constitutional standards. There is no doubt. I concede that. And there is no question about it in our discussions. That is not the issue in this case as to whether there is another system which could meet a constitutional standard.

We spent three years trying to develop one that would suit our needs and would suit the plaintiffs' needs. We debated a great variety of possible plans, many of which would have met constitutional standards.

THE COURT: Do you really want to see a plan go through here, or are you pointing out some technical difficulties?

MR. COHEN: There are no technical difficulties. We have a plan that is workable, that has been agreed upon by all of the parties.

THE COURT: But it isn't workable, because the analysis that has come up has not proved to be satisfactory.

MR. COHEN: To one person. One person, who cited five others, said it was, or if it is not good, there is no

testing expert in the world -- there is no testing expert in the world that has been brought to my attention who will say that you can develop a proper examination without a job analysis.

The expert provided by the plaintiffs said you need a job analysis. Judge Mansfield said you need a job analysis. Everybody agrees that if you are going to give an examination to determine qualities for a job, you need a job analysis.

All we are saying in this case is that step, which is going to put us in a position to give the exams that everybody agreed are appropriate, constitutional, non-discriminatory as a basis for following out, for carrying out State policy -- that the first step is to do a job analysis.

Now, your Honor, one thing that boggles my mind in this whole proceeding and that I really cannot find a way of getting a handle on, is the fact that the Board of Examiners had no obligation to talk to anybody about these exams. We went into court with a plan that we felt met constitutional requirements, and Judge Mansfield said to us, "Look: this is not a kind of matter that ought to be decided by courts. Parties ought to agree it is a complicated, technical area, and why don't you people go out and see if you can agree?"

When Judge Mansfield left the case and we came back

to Judge Tyler, he said the same thing, and we worked for almost three years considering a host of possibilities, endless possibilities.

THE COURT: Doesn't that tell you something? Doesn't that tell you something? If you have to consider all those possibilities and spend three years on something of this kind, doesn't it tell you that you are up the wrong alley?

MR. COHEN: No; it doesn't lead me to that conclusion at all. It leads me to the conclusion, your Honor, that there were a lot of varieties that we made a good-faith effort to try and accommodate a great many points of view in, and we made a lot of concessions.

We had great difficulty arriving at conclusions. There were changes in personnel as these meetings kept going on, who had different views. We tried to accommodate a variety of different views, and we finally came up with a plan.

Now, the plan is not a complicated plan. It is a flexible plan, which everybody agreed at the time provided a basis for developing constitutional exams. We in effect conceded that we would accept the advice of these other people and develop a plan that we could have a consensus on.

We permitted this interim system to exist for this

whole time, because we were promised that when that concluded and we put our plan into effect, we would have a plan; and now we are on the brink of putting the plan into effect. The Board of Education says, "Well, wait a minute. We don't like the job analysis."

THE COURT: What is the true function of the examiners? Are you supposed to ride herd over this whole function, or is the Chanceller -- that is, the Board -- the one to call the shots now with the plaintiffs involved in here and you to stand by and do the examining as they call the shots?

MR. COHEN: They call the shots in one respect only, and that is that the Chancellor and the Board of Education determine when there are positions that have to be examined for; in other words, when there is a need to give examinations.

They do not call the shots with respect to the type of exam that is to be given. That is the exclusive province of the Board of Examiners, and that is the province that is being invaded by the Board of Education, and at this late date, when we have already agreed we have a final judgment -- does finality ever have any meaning in the law if at this juncture they can come in with an entirely different plan?

I come back to your first question, your Honor: whether Step 1 in the proposed Board of Ed's proposed plan

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is the same as Step 1 in the plan in the judgment.

It is decidedly not the same. It is totally different.

THE COURT: I would like to hear now from the plaintiffs, whether they regard the plan as essentially the same, except in much better form.

MR. COOPER: From the plaintiffs' point of view, your Honor, or the Board of Education's?

THE COURT: Plaintiffs'.

MR. COOPER: Your Honor, I think I do have to agree with Mr. Cohen that Step 1 of this new proposed plan is different from Step 1 of the prior plan. It is different insofar as, instead of requiring a subjective set of qualifications, to be measured by an elaborate kind of examination system, it sets Step 1 as prescribing a series of fairly simple objective qualifications which can be measured without an elaborate examination process.

By simplifying the Step 1 examination process in that fashion, we avoid in this new proposed plan the need for having elaborate job analyses, because the Step 1 test is now a fairly simple, objective, objectively administered, objectively determinable test, and the emphasis is on Step 2.

THE COURT: How can you identify what the job analysis should be if there is no job analysis? The idea

behind this kind of shift, as I understand the Board of Education's theory on it, is to open up the system to allow people with the maximum kind of credentials to be appointed and to all the actual performance on the job to be the major determinant of who is good or who is bad.

If you make performance on the job the major criterion of success or failure, then you don't need a job analysis. You don't need to have a job analysis, because the job is the job, and you analyze performance on the job.

The only time you need this kind of elaborate job analysis is if you are trying to set up a test at the entry point, a test at the gate to determine who can get in the room or not. If you are going to have strict standards at that point, you need a job analysis to determine those strict standards.

At the door, Step 1 is the doorkeeper, and Step 2 is to determine who can finally stay in the room. The doorkeeper, your Honor, this new plan, is a doorkeeper who determines whether you have basic minimum qualifications of training and experience to make sure that somebody who is not wholly incompetent and inexperienced does not get in, but basically the new Step 1 says, "If you have minimum training and experience, then it is up to the Community School Board. If they want to give you a chance, given the

fact that you meet these minimum standards, they can give you a chance, and the real test for you is the performance on the job."

There, you don't need a job analysis for that, because it is what is.

MR. COHEN: Your Honor, can I make an observation on that?

MR. COOPER: And that is a kind of examination process which, as the affidavit of Professor Owens, which is submitted with the Board of Education's papers, suggests it is: moving the whole educational administration to a system where we don't try and screen people out by paper-and-pencil procedures at the door. We give them a chance and see what happens on the job.

THE COURT: Taking what you are saying as a fact for the sake of argument, how do you get past the legal point that when parties enter into a consent judgment, that judgment can't be undone except by consent?

MR. COOPER: All we are talking about is this final plan, not about the prior injunction of 1973. We are talking about this particular mode.

THE COURT: Wasn't the 1975 judgment a consent judgment?

MR. COOPER: No, your Honor. The plaintiffs

resisted it. The plaintiffs never agreed to the plan of the general structure proposed. If we could have some say as to who the consultants would be who prepared the job analysis and who prepared the test, if we could have some input into that, because it was always our feeling about this kind of elaborately structured exam, which is what the 1975 plan is, always our feeling that the key to it was who set it up, what kind of process they used, we might have had a different feeling about it.

The whole reason, if I may say this, the reason why the job analysis that we have right now is a failure is because the people who did that job analysis were not thinking about it in terms of the remedy ordered in the case. They were doing a job analysis under an oldfashioned system.

You look at the people on the job: you go and see what the people are doing, and you report on that. This is a system of how the job is to be done. And if we had had the input that we had wanted into who was going the job analysis and how it was done, if we had had that input, then we suggest the job analysis might have come back more successful.

But we were denied any participation in it at all. We were denied that in the nest step also, the preparation of the examination from the job analysis, and because we were

denied any participation in the choice or the supervision or anything of the people who were actually developing this new system, we resisted it, and I must say our resistance was well justified, because we see the way it was turned out.

If anything, there was consent between the Board of Education and the Board of Examiners, and I think the case law is clear on that. It is discussed in our brief, the latest reply brief, citing the Thermos Jug case and King-Seeley, which clearly says in a situation like that, where you have parties who are not really adversaries working out a judgment, that thatjudgment is not locked in for all time on the basis of their consent.

I think that the King-Seeley case is --

THE COURT: I am not too sure about that.

MR. COOPER: In any event, we never consented.

THE COURT: I would like to hear the Board now.

MS. ROTHMAN: Our basic position here is that I would like to respond to some of the things that were said prior, and then I will say my own argument.

Step 1 is basically an unassembled examination. The Board of Examiners implies that this is not an examination, that it is unheard of. This examination presently is in use by the New York Civil Service Commission. I have attached examples of such examinations to my papers.

It is not the only kind of examination in use, but it is one of the recognized new methods of testing people. It also has been used in the past by the Board of Examiners themselves, in their own substitute examination. I think it was around six years ago they used it for two years.

This type of testing has been upheld by the Court of Appeals, as stated in my brief, as a valid determination of merit and fitness.

What Step 1 essentially will be is that all people who meet the requirements for State certification plus the eligibility requirements of the Chancellor, will submit their records, the copies of their experience resumés to the Board of examiners. The Board of Examiners will develop a profile based on the submissions plus a written essay, on which they will comment.

They themselves will administer and develop this profile of the candidate and submit that to the appointing authorities.

Now, we believe that this fulfils the statutory role of the Board of Examiners under State law. Even though we have not --

THE COURT: Is that a mechanical task?

MS. ROTHMAN: No; it is not, because it is a new area. We are giving them the discretion to develop profiles,

to develop questions for written essays, to determine the person's competency in English, to comment on these written essays.

This is a whole new area, and they have discretion here; they have leeway. What we are trying to avoid is a repeat of years and years of litigation of the old system or similar systems to the old system being initiated and the expense and consumption of time.

We have been told by experts --

THE COURT: You are substituting profiles and essays for job analysis; is that what it is?

MS. ROTHMAN: I will explain to you why no job analyses --

THE COURT: Is that right?

MS. ROTHMAN: No, no. We are substituting that for the Step 1 exam. This is our exam rather than a formal, structured exam. No job analysis will be required under Step 1, because all people who meet the qualifications of the Chancellor, which is something totally different -- that just has to do with supervisory experience and teaching experience and other eligibility requirements --

THE COURT: Meet the requirements for what purpose?

MS. ROTHMAN: The Chancellor --

THE COURT: For what purpose for the particular job?

MS. ROTHMAN: Let me explain to you.

THE COURT: Doesn't that require particularization as to what the job is?

MS. ROTHMAN: Let me just clarify this.

Under State law traditionally -- there is no contention about this -- the Chancellor of the City School System prescribes minimum eligibility requirements for each position -- that is in the State law -- for supervisors, for teachers, whatever the position is. That has always been. That is not being contested.

Under our plan, the Board of Examiners verify an applicant's meeting these minimum eligibility requirements, plus they will also review a person's record, resume and essay and set up profiles of this person's history and training.

Our experts have told us that it is impossible to predict in a pre-structured exam suchas the kind that the old plan envisioned, a supervisor's actual performance on the job, because the qualities that are necessary to make an effective supervisor -- leadership qualitites, creativity - are impossible to assess.

I have also been told by Dr. Owens and other exepts that the State University is moving away from requiring actual course requirements for State certification and

moving towards performance requirements, and all this is based on the latest research, which seems to show that these job analyses and very complicated, structured exams for entry into this area are preposterous, because you can't determine before a person is on the job how they will function in a supervisory position.

Another problem in creating a non-discriminatory exam is that the system is changing very rapidly, as we show in our papers. The school system in the City of New York today is two-thirds minority. In a few years, we predict, there will be close to ninety per cent minority students in the system.

If we prepare job analyses today, we have been told by experts that they in no way will be adaptable to a system that is changing so rapidly.

In the light of the rapidly changing structure, in light of the rapid change in the system, we feel we have to have a plan that is very flexible, because we can't afford to go out and not only in terms of money but just in terms of using people and time and effort and litigation and do cumbersome job analysis, which in three years will be irrelevant to the system.

One of the reasons for this litigation is that the Board of Examiners had exams that were totally irrelevant to

the needs of the school system, to the fact that it was a changing system, the fact that New York City, out of the five largest cities, had the lowest proportion of minorities in the supervisory system. The Board of Examiners, in the making up of the exams, were totally oblivious to this. In fact, their teacher exams today are presently being challenged as discriminatory in this court in a case that has been pending already for two years.

I believe that disparate impact was found, and the burden of proof shifted in that case, and we feel that this is enough. We have to have a system that is more responsive otcurrent needs, that can be flexible.

The system today -- say ten years ago, the system in New York City was eighty per cent white. Today it is two-thirds minority. In a few years it might be all minority. It is a rapidly changing system.

The duties of supervisors are being changed; the responsibilities are changing. The Board of Education can't ignore this. Under its statutory responsibility to make all policy for the City School Districts, it has to insure that the District is responsive to these changes. It just can't allow the Board of Examiners to prepare exams in a vacuum and then, five years from now to have a new Chance lawsuit.

We talked about this in meeting after meeting with

the Board. I myself had problems with their position, and they said, no; we must go ahead in court, because we just cannot permit this to go on. We can no longer operate in a vacuum as if these conditions don't exist.

Now, as far as Step 2 is concerned, the reason that we have taken the Board of Examiners out of Step 2 is totally educational. We have been informed by the appointing authorities that they serve no useful function, that they come into the field, they introduced the appointed authorities, who are the employers, the Community School Boards, essentially.

THE COURT: Who performs no useful function?

MS. ROTHMAN: That the Board of Examiners in Step 2 performs. no useful function.

THE COURT: Doesn't the State law require them to perform that useless function?

MS. ROTHMAN: I don't think so, and let me explain why: because I think since we have given them a full role in Step 1, even though it limits their choices less than the original plan did -- but since we have given them this function of developing an essay, commenting on it, whatever they would like to develop within the constraints of our plan, and since Step 2 is only a deferral of licensure until an on-the-job evaluation is completed, I think that if there is no educational justification for them in Step 2, and there

really is not, because they would only duplicate the functions that the employers are doing now in Step 2 -- that is the Community School Boards -- they would come once or twice a year and observe.

We have gotten tremendous complaints from the Community School Boards, who feel that it is totally inconsistent with the whole system of decentralization. These people come from central headquarters; they don't know what is going on; they sit and observe twice a year. It is preposterous to have them there.

So we are giving them a full role in Step 1, and we are postponing licensure until after on-the-job evaluation. I don't think it is inconsistent with State law. We are giving them their role in Step 1. I think if there is no educational justification to have them in Step 2, you just have them there just to sit there at a great expense, and I think it is inconsistent with the spirit of decentralization, which is also required by State law.

I just don't see any justification for having them there in Step 2, as far as the State law issue is concerned, as we put forth in our papers. I think the State law clearly gives the Board of Education the duty to decide the qualities and the qualifications necessary for a position and gives the Board of Examiners the responsibility to measure these

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qualities.

I think that is exactly what our plan is going. We are saying, "We want you to measure experience, a person's literacy and a few other objective things and not go into the whole complicated pre-structured exam," which we are convinced, after talking to the plaintiffs, five years from now will only be challenged anew as to its constitutionality, because they are so complicated and so cumbersome.

Also, Dr. Owens, whom I spoke to at great length last week, said we are moving away from this, because we have come to realize that these pre-structured exams cannot effectively measure a supervisor's ability to do the job.

One last thing: another thing I would like to point out is that all these people who will be eligible for supervisory positions are people who have already passed Board of Examiners teaching exams.

It is not like these people have just come in off the street. They are people who are teachers, having passed Board of Examiners teaching exams, who anywhere in the State would be eligible for supervisory positions, because they meet all the requirements for State certification, plus they will be people who meet all the additional requirements set forth by the Chancellor under the State Education Law, plus they will also be people who will participate in Step 1 and

Step 2 of this plan.

To argue that these are people who will be totally unsuited for the position just makes no sense.

One last thing I would like to comment on:

In terms of on-the-job evaluations, traditionally it has never been the Board of Examiners who conducted these on-the-job evaluations, but the Chancellor, who was the appointing authority for the high school system, and the Community School Boards, who were the appointing authority for the junior high schools and elementary schools.

The State law provides that it is these people who supervise a person's on-the-job performance in order to decide how their probationary period is going.

THE COURT: Who is the second one? The Chancellor and who else?

MS. ROTHMAN: The Chancellor and the Community School Boards. It is the Chancellor in terms of the high school system, and decentralization only affects the junior high and the elementary school, and under State law it is these people who are responsible for on-the-job evaluations, not the Board of Examiners. They have been doing it for years, and, educationally, as Dr. Owens says and as our people have told us, the people in the field, there is no educational justification for having them there, and we feel that we

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have given them a full role under Step 1.

I will be candid, at the risk of provoking my adversaries. I think that it is true that under Step 1 we give them less of a role -- not less of a role; they have a full role -- but less jobs and probably less work to do than they would like, and I think that is their basic problem here.

But I think that the City School District, its needs, the need to end this litigation -- that has to become and should be paramount and not the desire of the Board of Examiners to have a lot of jobs and pretige and work for themselves.

I just don't think that in this system today, that is changing so rapidly, where the needs are so great, that there are such changing needs, that this can be allowed to prevail in this case.

One legal point I would like to make:

You were taling about authority to change a consent udgmentj I think that it is clear -- I think it was the King-Seeley case -- that if a decree is not -- if changed circumstances or recent experience since the decree was entered shows that it is not likely to effectuate its goal, then there are grounds for changing it, there are proper grounds for changing the decree.

THE COURT: Which case is that?

MS. ROTHMAN: I think it was the King-Seeley case.

MR. COOPER: King-Seeley vs. Thermos, 418 F 2nd 31.

MS. ROTHMAN: And our basic proposition here, our major proposition is that changed circumstances since March of 1975 have demonstrated that the original plan has little likelihood of achieving its primary goal, which is to develop a non-discriminatory and job-related supervisory selection system. If it is such that it has little likelihood of achieving its primary goal, I submit it is clear that this Court has jurisdiction to in fact modify the original plan.

MR. COHEN: Your Honor, may I be heard?

THE COURT: Do you have anything else?

MS. ROTHMAN: I would like to point out one last thing in the original order. I think it was Judge Mansfield who stated -- I don't have the citation here -- that at any time the plaintiffs, once a plan is implemented, could come into court and challenge its constitutionality.

I submit that the Board of Education in this case came into court now to challenge the job analysis and the original plan almost as a prophylactic measure before five years elapsed, and then the plaintiffs come in pursuant to the authority vested in them in the original judgment to

challenge the constitutionality of the plan, because that is what would have happened if we proceed under this original plan.

THE COURT: All right.

MR. COHEN: Your Honor, I had the feeling in listening during the last remarks and the early remarks that I am attending a legislative hearing, where testimony is being given about how the Board of Education would like to see the statutory scheme of New York State operate.

The fact of the matter is that the New York State statutory scheme bears no relationship to anything that you have heard described by counsel for the Board of Education.

For one thing, the so-called Step 1 in their program is exactly what has been in existence for many years. As far as State accreditation is concerned, the State sets up certain requirements for a job. The Board of Education tells what the job is, and that is just a matter of somebody determining whether the candidate meets those qualifications.

There werelengthy, lengthy debates in the State Legislature to eliminate the Board of Examiners in 1969, when the decentralization law was put into effect. The counsel for plaintiffs were active in seeking to effectuate that result. Professor Trachtenberg, who is the expert who participated in some of these negotiations, was an important figure

in that effort to cancel out the Board of Examiners, and the State Legislature decided they did not want to do that; they wanted to preserve the role of the Board of Examiners, for a very specific and obvious reason: they wanted to have an agency that would determine that politics, whether it be local community board politics or Board of Education politics, it would not be the basis for making determinations as to whether candidates were qualified to serve as supervisors in the New York City School System, and they specifically rejected the proposal and preserved the Board of Examiners' role.

You would hear -- I keep hearing the words, "We gave them a role. We gave them this. We gave them that." Who is to give? The Legislature gave the role. It is not the Board of Education that gave the role to the Board of Examiners.

I have to deal with certain misstatements that have been made. It has been said that the Board of Examiners gave unassembled exams with the suggestion they were the same type that were being proposed by the plaintiffs. That is an obvious and blatant distortion and falsehood. The Board of Examiners on one occasion did give an unassembled exam. It had an oral interview, which was substantive and complete and was not a record check.

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To suggest that the Federal, State or the City authorities give unassembled exams of the type proposed by the plaintiffs is equally untrue. Those exams evaluate and set up criteria. They have pass-fail determinations. They are not merely record checks. They are totally different.

To say that you don't need a job analysis -- Mr. Cooper was quite correct, that since there is no examination you don't need a job analysis. But in our view the job analysis is something that is essential for an examination.

But, more important, how do we get into this? How do we find ourselves in this posture? We have a State obligation, a duty and a right to establish examinations. We have done it. We have done it with the concurrence of both the plaintiffs and the Board of Education, and now we find ourselves in a position where we are being blocked by the Board of Education, and because they are blocking us now they say they don't like the whole system, they are going to throw it out.

That is an absurd position for us to be in after having waited this long and worked so hard to develop a system which is eminently workable, contrary to the assertions of both the plaintiffs and the Board of Education.

I want to turn to the plaintiffs' assertion that this is not a consent judgment. If it is not a consent

judgment, I don't know what the English language means, because Judge Tyler says, "Whereas all parties herein agreed upon a plan for such plenary examinations" -- except that they did not agree on the method for choosing the consultants to be used, and they did not agree upon reporting provisions, and they submitted the plan to this Court on May 24, 1974, "and whereas all of the defendants moved this Court for an order modifying the judgment to permit" -- and it goes on.

That is an agreed plan. That is the same agreed plan when the plaintiffs made their motion to have a voice in determining the consultants that they submitted to the Court. It is the same plan that the Court finally approved.

To say that they never --

THE COURT: Let's take it on your own theory, that it is a consent judgment, and there is a good deal to what you say. I am not saying that it is, but there is a good deal to your point.

If the attempt is to achieve the same objectibe by a different means, it doesn't fall under the ban of the cases that you cite.

MR. COHEN: But, your Honor, we never get that far. We don't get that far. We don't need -- we don't have to take their advice as to the kind of plan we need.

If what you are saying --

THEA COURT: You don't have to do anything at all. You can move to another state, and then nothing will be accomplished.

It sounds to me like this is a dispute between petty kingdoms here as to who is going to conduct the affairs of the school system.

MR. COHEN: But, your Honor, rather than have the Board of Education and the plaintiffs dictate a system to the Board of Examiners, the Board of Examiners would be much better off to not have entered into any kind of a judgment, to have gone off and presented its own plan, gotten a determination as to whether that examination plan is constitutional, which is the only issue the plaintiffs were in a position to raise.

By this time, we would have had a determination as to whether the plan is or is not constitutional. We would be giving our exam.

We did not do that.

THE COURT: Is there anything unconstitutional in the new proposal?

MR. COHEN: I think it is not an examination. It is really not an examination.

THE COURT: Is there anything unconstitutional about it?

MR. COHEN: It violates State law.

THE COURT: That is not unconstitutional, is it?

MR. COHEN: I don't think you reach the question about whether it violates the Federal --

THE COURT: Violation of State law comes about because you think you have jurisdiction in an area that you want to stay in.

MR. COHEN: You know when we think we are ousted, we don't have a position as to whether we should be ousted or not.

The Legislature made that determination. If they want to kick us out and they want to downgrade and denigrate our role and our function, which is an absolute pack of incredible distortions as to what the Board of Examiners does -- if they want to do that, the place to get that done is to go to the Legislature, the way they tried to do in 1969, and persuade the Legislature that it is a good idea to kick us out.

I am not here defending the Board of Examiners' right to keep their jobs. I am here because the Board of Examiners believes it has a statutory responsibility to fulfil, and it is not up to the Board of Education to determine that that role is going to be filled by them.

THE COURT: You are not going to be able to fulfil

your statutory function if you are given charge of Step 2 instead of the Board taking charge.

MR. COHEN: For two reasons: one is that we don't believe that Step 1 provides an opportunity to do the initial screening that we established as an appropriate basis for deciding who is going to get to Step 2.

Our original plan, the one we submitted to Judge Mansfield in 1972, had an assessment center concept. That assessment center, incidentally, contrary to the notion that it is so far out and complicated, is being adopted all over the country. It is a very widely used technique to develop a profile of a candidate, and it contains one very significant ingredient, about which the plaintiffs and the defendants argued for a long, long time.

The plaintiffs took the position it should have no cut-off. Nobody should be disqualified. What you should do is if one of the elements you are testing is managerial ability and it turns out that the candidate has none by the test standards that have been devised, then you put on that schedule zero, for example; but you don't disqualify anybody.

The Board of Examiners insisted that its role requires it to be in a position to disqualify those that did not meet minimal acceptable standards, and that is the standard that has been written into this test that was finally

agreed to.

We finally have come to the point where we have an examination. Now, it is no big deal, and they are making a complicated mess. We have prescribed precisely how a job analysis has to be done. If the original consultant did not do it that way she talks as if this thing is going to be frozen in concrete. It provides for on-going updating.

It is not that big and complicated a job. It requires the following of procedures which are recognized by the EEOC guidelines, which are recognized by testing analysis all over the country, and the only thing we need in order to be able to prepare prototype examinations.

They suggest we are going to run willy-nilly and give exams. We give exams when the Board of Education calls for exams. They issued a statement ten days ago -- I have a copy of a circular -- announcing a title which in the normal course under State law requires that an examination be given. We want th prototype so that we can give an examination of that kind.

That is not being unreasonable. That is not seeking to protect a fiefdom, to protect jobs. We have a role, and we want to fulfil that role.

We developed this plan specifically and with the input we had, because we wanted to be sure that we had

sufficient community acceptance about the practicability of it, the realism, the constitutionality of it, so we would not be subject to the kind of attacks that we were perpetuating the old system, and we are not doing that.

THE COURT: How long do you think it will take to develop a 1975 job analysis that you think is appropriate under the judgment?

MR. COHEN: You have to be able to observe people in a school setting. I don't know how long. That is the Board of Examiners sitting right there. That is the whole Board, except for one member, who is on leave.

I don't know the answer to that question, your Honor, but I do know that it is now June, and school ends in a couple of weeks. I think that there are observations required, and I think it could be done if there were students there in a situation that was a typical situation, very promptly, very quickly.

We never expected that the Board of Examiners had prepared for last September -- they had thought they would be in a position to be giving certain examinations, because they felt certainly the analysis would be done, and we would be able to start developing the exams and would be under way.

THE COURT: Was there any requirement for the supervisor? Were there any jobs available calling for new

supervisors?

MR. COHEN: No. I think that --

THE COURT: So that any delay that is involved here is not interfering then with the school system.

MR. COHEN: We are under an injunction, your Honor. We have been sitting here under the injunction. The plan worked out says we lift the injunction and you can give exams as needed.

There are other positions that continually come up. One of the reasons there hasn't been any crying need is because we agreed to an interim system, where people were entitled to get a license under other job evaluations.

We did a creditable job. The Board of Education never came in to us and said, "We think you are doing a lousy job." We don't look for that role in this examination.

THE COURT: Synthesize for me how this case can be wound up on your theory.

MR. COHEN: One of two ways: by an order from this Court directing the Board of Education to promptly provide the Board of Examiners with job analyses for the three positions that are the prototypes called for under the plan. That is Possibility A, which we think is not possible, since the Board of Education has already indicated both its hostility and its inability to do this.

So therefore we offer as the second alternative -- and, incidentally, if I may interject, that is what we came here in January to ask for: we came in in January to say, "Hey, we are supposed to get job analyses. They have been sitting on this for a long time. We cannot get them. Help us do something to make them give us the job analyses. They said they would; now they say they can't, in effect."

So we say, "Listen: it is not such a big deal. Our consultant says he can do it. Everybody else does it. There are plans all over the country that are involving job analyses. If you won't do it or can't do it, then we will do it. We will have our consultant prepare the job analyses."

So we say to the Court that it looks to us to be the more plausible route, and we urge this Court, please; we have been in this case for so long; we have a plan which everybody agreed on as a constitutional plan. Don't permit us to have been bamboozled by this long-drawn-out process, in which we negotiated out every other harebrained idea of a plan that came up, and now we've got a plan we are entitled to have implemented, and one of those two ways should do it."

THE COURT: Now, if what you say is true about school being out, how long will it take you to do it, to do the job?

MR. COHEN: Can I consult with the Board?

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MS. ROTHMAN: May I --

THE COURT: No. Let me listen to one at a time; otherwise you will get me mixed up -- or more mixed up.

(Pause.)

MR. COHEN: With thematerial that has already been developed by AIR that we have, coupled with perhaps some additional observations taken when the schools will start in the fall, we could have job analyses by the middle of October.

THE COURT: All right. I would like to ask the Board, if you are directed to proceed to prepare job analyses, how long will it take you to prepare them?

MS. ROTHMAN: In all candor, I cannot give you an answer at this time, because we would have to get a consultant.

THE COURT: You had better find an answer, because I think part of the difficulty in this case is that the stagger system is operative. One wants to go; the other one wants to sit.

MS. ROTHMAN: Our plan, if I could just be heard for a minute, because I am troubled by a few things that were said here -- our plan can be implemented almost immediately.

THE COURT: I know. Suppose your plan is not one that is acceptable, and you are directed to comply on a

forthwith basis -- forthwith in quotes -- with the judgment as it stands, the March 1975 judgment. How long would it take you to do it?

MS. ROTHMAN: I will meet with my clients tomorrow.

THE COURT: What's wrong with meeting them this morning and finding out by noontime?

MS. ROTHMAN: Have them hire a new consultant immediately, because the plaintiffs inform us that they felt that the AIR analysis would not have prepared a constitutional exam, and on that basis it is prepostrous to go ahead with the AIR analysis.

Also, I think that when an expert like Dr. Owens, who was one of the people under the old plan --

THE COURT: Do you think it will take you any longer than October 15th to hire somebody to do it?

MS. ROTHMAN: No; I don't think so.

THE COURT: You can do it before that?

MS. ROTHMAN: Yes, but may I just be heard on one thing that I think is very important?

Dr. Owens is only one expert among many. He is the only one that I put in an affidavit, who told us that no job analysis will produce an exam that will be adaptable to the changing needs of New York City, so we feel that for us to go ahead and do a job analysis --

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THE COURT: That is a philosophical observation on the part of a theorist.

MS. ROTHMAN: I don't think so, because I think that the system today is changing so rapidaly.

THE COURT: I know.

MR. COOPER: Your Honor, if I may --

THE COURT: How long do you say it would take to prepare the kind of plan that was directed to be prepared in the judgment of 1975?

MR. COOPER: I think that that could be dine in a year from the date that it is started properly.

I think that nothing that has been done so far is a proper start, your Honor.

May I say in just a minute why?

THE COURT: One of the things that is important here is to recognize that these affairs of state that you call attention to on your part of the case will have to be resolved within this lifetime, and one year is longer than the lifetime, according to the common law, if you remember your law.

MR. COOPER: Your Honor, that is what we have an interest in doing. I agree with your characterization of what is going on here in part, that there is a fight between the two boards as to who is going to get the right to

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do this.

THE COURT: Why isn't the safest thing to the Court to stick by the judgment that everybody allowed to be entered in March 1975, that nobody said was wrong at that time?

MR. COOPER: Your Honor, we did not allow that to be entered. It was entered over our protest, and I think it is worth repeating: the reason why it was entered over our protest is that we did not believe that without -- we believed that there was a substantial chance that we would go off in the wrong direction in conducting job analyses, and the events confirmed that fact, and the fact that the Board of Examiners --

THE COURT: What events confirmed the fact --

MR. COOPER: The job analysis that came in.

THE COURT: This means that the Board did not follow the instruction of the judgment.

MR. COOPER: No, your Honor, but we see the result.

May I just explain to you what the problem is?

THE COURT: You know, you may be talking yourself out of a constitutional case. You may be talking about a constitutional impossibility before you get through with your analysis.

MR. COOPER: Any of these things is constitutional. We don't doubt the constitutionality. The only problem is

the efficiency.

What plan can be most promptly put into effect and end the case, because I want to end it as much as anybody does. How can we end the case most speedily, most expeditiously? One and two: how can we do so in a way that conforms to legal requirements and the constitution, the State law?

THE COURT: It seems to me the only way to end the case is to adopt a plan and stock to it, and the plan was the one adopted in 1975, and nobody is sticking to it. They are moving in other directions. Philosophies are changed, and the concerns have been changed.

MR. COOPER: No, your Honor. I am not talking philosophy; I am talking about the facts of this job analysis.

The Board of Examiners has just told you that a month after school opens they can correct the job analysis and have something to move forward to. It did not tell you how long --

THE COURT: They said October 15th they could submit them.

MR. COOPER: They could submit a job analysis. That is only the first step in the implementation of this plan. After you have the job analysis, all that does is tell you what the duties of the job are. Then you have to construct an examination which measures all those duties

fairly and squarely.

THE COURT: How long would it take you to construct the examination on the basis of those duties?

MR. COHEN: I think there I can be more specific, because I think our consultant did give us an estimate.

THE COURT: I was looking for the outside date when this thing could come to court, rather than the start line.

MR. COOPER: But the important thing --

THE COURT: Let me get his answer.

MR. COHEN: The belief is that if we got the analysis in the moddle, we could be ready for examinations in the second term of school, for the second term of school in February of 1977.

MR. COOPER: But that is based on the assumption as we just heard, that a month after school opened they could take these job analyses and correct them.

THE COURT: How do you know what is wrong with them until they are prepared?

MR. COOPER: If they are going to get this new job analysis prepared in a month, what they are doing, as he said, based on the data that we already have from AIR, is starting from what AIR did and try to upgrade and improve it.

THE COURT: Has he said that is how they are going

to do it?

MR. COOPER: He just said that. Based on the data from AIR. That has to be the premise. Unless they are going to operate largely on the basis of what AIR already has submitted, they are not going to be able to do it in a month, and the problem with what AIR already did is fundamentally constitutionally defective, because AIR just went out and looked at the present supervisory force without trying to find the good ones and the bad ones and saying, "What are these people doing?" and gave a report back on that.

That is a present supervisory force, which was largely selected under the old, unconstitutional system. What they are doing is what that group of people does, and so what we are getting --

MR. COHEN: Eleven hundred were selected under this system.

MR. COOPER: We are getting a job analysis that is primarily based on what the people selected under the old system do.

You take that kind of a job analysis and try to construct a test which is based on that, and what you are going to get is a test which replicates the old people, and we are right back in the old box.

THE COURT: You want to abolish the past and start

in the future.

MR. COOPER: I don't want to abolish the past, but I want to have a system which is not designed to perpetuate the discrimatory past, which is the exact road that this kind of job analysis leads down.

What you need to have, as the Owens affidavit indicated -- what you need to have is some kind of a job analysis which takes account of what the needs of the system are, rather than simply look at what people used to do, and the Board of Examiners does not seem to understand that.

There is no discussion I have had with them, there is nothing they said in court this morning that talks about how they are going to work off what AIR already did, that they have the foggiest understanding about what the case is and the way we need to go.

I think, your Honor, that is my view on this. I think the most important question, the thing that you have indicated is of importance to you is the State law issue, and I would like to say just a word about that, if I may.

Mr. Cohen has indicated, has stood up here and said what you have heard is a lot of legislative discussion, and then he proceeds to rattle off some gossip about what happens in the Legislature. Why on the State law question don't we look at the State law, the statute? It is right in

in our brief. It is right in the New York Education Law, Section 2573.10, and it says, contrary to the impression that the Board of Examiners seems to have in its mind, and contrary to the impression that it seems to be trying to impose on the Court, the State law does not set up a system whereby the Board of Education decides when an exam is going to have to be held, and the Board of Examiners has free rein to give any kind of exam it wants.

What the State law says is that the Board of Education, under 2573.10, designates the kinds and grades of license, together with the Board of Education designation, together with the academic and professional qualifications required for each kind and grade of lisense.

Now, in the past it is true in designating the kind, the academic and professional qualifications in the past, the Board of Education has given the Board of Examiners fairly broad carte blanche. They said academic qualifications are leadership ability and educational knowledge and generalized things like that.

THE COURT: You are really arguing to me that the Board of Examiners is a vestigial structure.

MR. COOPER: No. I argue that it is within the control --

THE COURT: If your argument is carried to its

logical conclusion, what is their function?

MR. COOPER: It is within the control of the Board of Education under the statute. I am talking about the words of the statute. It is within the control of the Board of Education to determine whether the Board of Examiners in performing its doorkeeper function is strict enough and serious enough -- how strictly and seriously and high or low or left or right that doorkeeper function is performed.

The Board of Education gives the instructions to the sergeant-at-arms, and the sergeant-at-arms carries them out.

Those instructions may be, "Find me the people who have the most type of" --

THE COURT: It is a peculiar type of judgment. You can exercise judgment providing you do it my way.

MR. COOPER: I give you the instructions.

THE COURT: That is what I am talking about. I give you the instructions, if you do it my way.

MR. COOPER: According to the statute, I advise you. I designate the academic and professional qualifications required. That is my job: education.

I used to say academic and professional qualifications are educational leadership. "Go check out people for that."

The Board of Education has decided, because the Board of Education seems to realize what this case is, about giving the Board of Examiners that kind of broad discretion, creates a system whereby they start screening under tests, and we screen all kinds of people out under tests, because we are trying to predict on the basis of these tests who can do a job.

The Board of Education now says, "We have decided this is a bad system. We would prefer to set the academic and professional qualifications less subjectively," and say, "All we want to do is make sure you have a certain number of years of teaching experience, educational requirements, that your experience is at least related to this."

It is not wholly objective, but it does tend to be fairly straightforward. We want to set the standards at that straightforward level, because we are not required under State law to have competitive examinations to rank people here. The State Legislature has said that all we have to do is determine minimum qualifications. We want to set our minimum qualifications at that more straightforward level to give us the ability to crank in the maximum range of people into the job and let the Community School Boards then try out the maximum range of people, and let's let the Boards' observation of how people actually perform on the

job be the real measure.

The Board of Examiners doesn't like that.

THE COURT: What do you, then, assign to the Board of Examiners to do? You have a polyglot group of people here, brought into the arena, and you tell the Board of Examiners, "Examine them." Against what backdrop?

MR. COOPER: Your Honor, in the nature of things, if the Board of Education switches from setting academic and professional qualifications in a subjective generalized professional leadership kind of way, to setting them in a way of three years of teaching experience and advanced education in the field, if they set the requirements that way, in the nature of things it gives the doorkeeper much less to do. That is undeniable.

THE COURT: It looks to me that what you are doing is pushing the examiners out the door.

MR. COOPER: Your Honor, I couldn't get the job. I don't have the teaching experience. I don't have the educational requirements. If I may, you probably couldn't get the job, either.

THE COURT: Suppose, for the sake of argument, that they said, "All you need is a bachelor degree from City College," and you come into the arena, and now, Mr. Examiner, since we are going to determine this on a basis that really

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doesn't need your help; we will take over the function of determining it.

So with two strikes, you have just wiped out the Board of Examiners, haven't you?

MR. COOPER: Your Honor, I would suppose that if the Board of Education tried to set the academic and professional qualifications so low as to be non-existent --

THE COURT: What's so low?

MR. COOPER: I don't know. Maybe if all you require is a bachelor's degree, that might be so low. I can't determine that question. But at some point, if it is set so low, I am sure the Board of Examiners can go into State Court and say that you haven't set any academic and professional qualifications; therefore, you have made a mockery of this language.

But I don't think there is anything in Step 1 of the present plan that suggests that the academic and professional qualifications will be set that low. For one reason: the Board of Education does not have total control over it. State certification has requirements. Mr. Nyquest sets minimum standards, but beyond that, the Chancellor has always imposed requirements above and beyond the State certification, and there is no suggestion he is going to stop imposing such requirements.

So we have some serious academic and professional qualifications, qualifications that I venture to say nobody sitting in front of the bar in this room could meet, and those are not frivolous qualifications. Sure, the Board of Examiners doesn't have a lot to do in the sense that they used to.

THE COURT: What kind of a job analysis would correct the excesses and inadequacies of the past and be an undiluted acceptable form?

MR. COOPER: Your Honor, the difficulty is that if you don't accept the decision which the Board of Education has made, it is better to have a fairly simplified Step 1, with objectively determined standards. If you don't accept that decision, then Step 1 becomes the structure where we have to devise these paper and pencil procedures which tell you how well somebody is going to perform as a principal in a school, with all the things that come in, where he doesn't get to perform under paper and pencil, and that's an exceedingly difficult problem. It is a problem which led us into three years of discussions, because we kept on suggesting at various times it would be better to move away from all this paper and pencil stuff to predict how well somebody is going to perform on the firing line.

THE COURT: Suppose you assign new Step 1 to the

the Board of Examiners to formulate.

MR. COOPER: Your Honor, I can't believe that is a serious proposal. I can't believe that. The whole reason why we objected before was because we believed that --

THE COURT: Within the framework of taking these minimum standards to bring people into the gate.

MR. COOPER: Your Honor, the job analysis is the determination of the kind and grade of academic and professional qualifications. That is what the job analysis is, particularly if the job analysis is going to do what we said.

If the job analysis is simply going to go look at what people have been doing, then it is not setting qualifications. It is just looking at the people there.

But if we agree that as a constitutional matter, to correct these job analyses and make them accurate for these purposes, they have to be not merely looking at what happened in the past; they have to be forward-thinking. They are going to have to embody some setting of goals and standards and qualifications.

If you give the Board of Examiners the right to do that kind of job analysis, the right to do this job analysis, they have two choices; either they do a lousy job analysis by simply looking at the past, or they look to the future and take over the Board of Education's clear statutory mandate.

I can't believe that that is a serious possibility. If anything, give it to a master. I can't believe that you just give it to the Board of Examiners.

MR. COHEN: Your Honor, can I make one observation on this last point that Professor Cooper expresses such incredulity on?

I frankly am equally incredulous, since he sat at the table for several years and agreed on this precise procedure, and, as a matter of fact, in an effort to meet the specific problem that Professor Cooper is raising. The plan itself calls for consultations with various people as to their perception of the job, not just the manner in which the job is awarded.

All of these points that are being raised out as great insights, as great awakenings the Board of Education has suddenly come to some conclusion, driven there by the financial crisis, by the changing quality of the City.

Every one of these things was discussed in nauseating detail during the years that we were negotiating this thing.

THE COURT: Apparently you did not do it very well, because you are still disputing it.

MR. COHEN: We did it well enough to write it down and have them sign it.

THE COURT: There is nothing wrong with finding out that you are going over the wrong hill and going back to the point of beginning.

MR. COHEN: Your Honor, one final point:

I want to correct this notion. We say it in our brief, and I am not going to burden you with repetition. I merely want to nail this point about what the role of the Board of Examiners is. There is no doubt in this statute. The question of accreditation and State accreditation and who sets the quality is contained in certain sections of that law.

But that law goes on to say that "The Board of Examiners shall prepare and administer objective examinations to determine the merit and fitness of all candidates", and there have been cases where it is made so clear.

THE COURT: Again, against what backdrop?

MR. COHEN: Against the same backdrop that we are now confronted with.

THE COURT: Against the backdrop of what the Chancellor prescribes.

MR. COHEN: Where the Legislature wanted to be certain that it was not going to be merely the accreditation set forth by the Chancellor and the Board of Education that would be sufficient to provide on entree into the system,

because they had a long experience, a long experience with corruption, with influence, with a variety of venal practices that had infected the school system back at the turn of the century, and those same arguments to protect the system against that kind of venality was precisely the reason for having the Board of Examiners established then, and it exists now.

How can you prepare a formulation by October 15th without going back to the history which has been discredited?

MR. COHEN: We don't intend to. First of all, your Honor --

THE COURT: Professor Cooper or the Board's representative says that you are just going to perpetuate the past.

MR. COHEN: Professor Cooper just happens to be wrong.

THE COURT: How can you avoid it?

MR. COHEN: Because we have a system. The EEOC for example, which is, with all deference to Professor Cooper's expertise in this area -- EEOC has not adopted Professor Cooper's thoughts. EEOC is satisfied that if the job analysis describes the job as it is, it is a reasonable job analysis.

Furthermore, our procedures provide for continuous

updating and continuous revising. There is no basis whatsoever for the contention that we are going to be out of date, that we are going to be administering exams that are unconstitutional.

We spent a long time making sure the exame would be constitutional.

THE COURT: Let me see if I can't cut the baby in two this way:

Suppose the examiners and the Board are directed to present a job analysis by October 15th. Then what?

MR. COHEN: We have the problem. We have a difficult problem.

THE COURT: At least I will then have a basis for an informed judgment as to whether the past is being perpetuated subtly or otherwise, and I will have a basis for saying that the Board is functioning within the sphere of its accreditation rights and the examiners are functioning within the sphere of their prerogatives, and then I can decide whether or not any of this is better or worse than a plan that lets everybody into the told to be examined.

It seems to me that just lowering the bars to let everybody in is a way of meeting the modern challenge. It is always easier to deal with people on the inside than to deal with people on the outside, complaining.

If the tendency were to say, "Sure, come on it, the water is fine. Now, we'll look you over and tell you where you head in," it seems to me that you have a sounder approach than the theoretical basis of saying, "No; we don't like your qualifications. You stay out."

Consequently, maybe we ought to have the three alternatives: one, that the Board was directed to do again what they said was inadequate and should be re-done, and they can do it very quickly. The new one that they have come up with here, to really lower the bars to everybody who wants to come into the car; and the third one, what the Examiners think ought to be done with this job analysis problem, and then make a selection and end this case.

MR. COOPER: Your Honor, I just might venture to say that it couldn't be done by October 15th, because I don't think your Honor could have a sense of what was really involved in the Examiners' proposal until you saw the examination also. Looking at the job analysis --

THE COURT: All right. This case I think may outlive modern times and get back into more, shall we say, repressive areas and different concepts. National, State and local concepts all depend upon many economic and political considerations. If we are going to start trying to have that form of quicksilver in this case, we are just never going to

be able to hold on to anything.

MR. COOPER: I think that is right, but if your Honor believes what you just said, putting this off until October to have the two Boards prepare a joint job analysis and then letting the Board of Examiners go ahead and set up their prototype examination, putting off until February the --

THE COURT: I don't want to put it off. My nature is not to put anything off. Maybe summer school will provide enough of an analysis instead of waiting until winter school.

But it seems to me that the problem is this. I don't want to plunge you into a new array of litigation at a time when I haven't got all the alternatives before me, and then make a choice so that a reviewing court, if there be one will say, "No, he shouldn't have taken 1; he should have taken 2." Or, "He shouldn't have taken 1 or 2 but he should ave taken 3."

The way to end cases is to really describe a great, big perimeter around the whole affair, and I don't think we have it sy using a method previously adopted in the '75 judgment.

The new proposed method proposed all the alternatives, because the Examiners think they have a third.

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MR. COOPER: They just want to go ahead with the 1975 thing.

THE COURT: I know. Maybe. Maybe. I reserve comment about this.

MR. COOPER: I guess our theory is that we can cut off, that we think that proposal is going down a wrong road, and it seems to us so clear that we would like to save everybody's time and effort now.

THE COURT: It may be. It has all the elements of bring in the viruses that infected the old system, according to the courts. I don't know if they did or they did not, but according to the courts.

MR. COOPER: We won't know anything about this until next February, whereas this plan is one that can be put into effect tomorrow.

THE COURT: If there is long delay and indecision, I say to you what is new about that in this case?

MR. COHEN: But that is not delay, your Honor. If we were to get the analysis and to proceed with development of examinations, that is not delay. That is implementing the system.

THE COURSE: That is a euphemistic way of saying rogress, but I don't believe it.

If you were able to tell me I waited, I had a con-

ference with everybody here some time ago, and I was told there is a brand-new plan coming out that is going to satisfy everybody, and it was going to be done in so many weeks, then so many weeks later somebody came in and said, "We need another month," then "We need another month and now we have this," and instead of having a dense of honor we have some discordant areas --

MR. COHEN: You were told something else at that meeting. You were told that when you deferred it for six weeks that the Board of Examiners would get the job analyses.

THE COURT: That is right.

MR. COHEN: It seems to me that what we are entitled to is that.

THE COURT: I am not too sure you are going to be happy with the job analysis that you get or that you create.

I have a deep-down suspicion that you are striving for something ephemeral.

MR. COHEN: We have confidence.

THE COURT: Gossamer.

MR. COHEN: Our consultant has told us that it is very practical. We developed with the plaintiffs a procedure for producing job analyses, and our consultants told us.

THE COURT: And I have never known a good expert to

fail to tout his own wares.

MR. COHEN: This isn't something he has created. We have given it to him. He said he can follow it and develop job analyses, and they will be constitutional.

THE COURT: I think that the situation is sufficiently unclear for immediate resolution. That is what I think as a result of all this talk. There will have to be all the alternatives laid on the table. The Examiners will be directed to prepare Step 1 by October 15th.

MR.COHEN: We have to have a ruling, your Honor, that we are to get the analyses done. You have to order the Board of Education to pay for it, because we don't have any funds apart from their funds.

MR. COOPER: And the reason they don't want to do it is because they are throwing money down the gutter.

MS. ROTHMAN: I think it is an outrage to allocate the Board of Examiners to prepare job analyses.

THE COURT: I am not going to direct the Board to pay for it. Under the present circumstances, it seems to me that if you have a better way of doing what they are suggesting in their new Step 1, I am not satisfied that the Board should be in control of that, but the Examiners may have to take over that phase under the State law.

If you think that you can do it better, you go out

and do it. It is your own expense.

MR. COHEN: We have no source of funds other than funds provided to us by the Board of Education. We have a better way of doing it, because that way is set forth in the plan.

THE COURT: Did you listen to television last night?

MR. COHEN: No; I was busy reading the papers that were submitted a week late by the Board of Education.

THE COURT: I was busy reading the papers, too, but I heard that the Board of Educationis having some financial problems with the City College, and I suppose that those things are --

MR. COHEN: That is a different Board of Education. That is the Board of Higher Education. But the $36,000 that this exam costs, that these analyses to date cost -- to cry poverty is a bit much.

THE COURT: I am at the point of indecision, so if you will just sit down for an minute, I want to dispose of something that will take three or four minutes.

(Recess.)

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DECISION

THE COURT: The motion is before the Court is brought on by the attorneys for the defendants, the Board of Education and the Chancellor, seeking an approval of the modified plan for licensing and selecting supervisors in the New York City School System as set forth in Exhibit 1 attached to the motion papers and permitting the defendants to develop a new supervisory selection and licensing system in accordance with such modified plan; and further modifying the March 25, 1975 order and judgment by striking paragraph VI thereof together with a plan referred to therein; and amending the reporting provisions contained in the introductory paragraph and subparagraphs A-D of Paragraph V of the March 25, 1975 order and judgment by deleting them in their entirety and substituting therefor the provisions included in Section VI of the plan annexed as said Exhibit 1 to the motion papers; and providing further that except to the extent inconsistent with the foregoing, the provisions of the March 25, 1975 order and judgment shall continue in full force and effect against all the defendants.

The conclusion of the the Court is that the Board of Education is entitled to the proposed modification of the previous plan with the exception that there should

hb ja 2

be allocated to the Board of Examiners the responsibilities under Step 2 of the modification to comply with State law.

The purposes of the 1975 order and judgment and the propsed modification are to assure a selection system free of discrimination in the determination of merit and fitness of candidates for school supervisors.

The conditons which brought on this protracted litigation should, of course, not be perpetuated by slavish adherence to the methodolgy contained in the March 1975 judgment.

There exists a reasonable possibility that those conditions might be embraced in the implementation of the 1975 plan as written. Even if that 1975 judgment were consensual, and it so appears to be at least in hybrid character, if its underlying objectives are capable of attainment by simpler, more practical means, less susceptible of controversy and unwitting perpetuation of past vices, the law allows *(see below) the Court in its discretion to order its modification.

However, the state law allocates the function of examining candidates on the Chancellor's criteria to the Board of Examiners. They must be given the responsibility on Step 2. The new plan allocates the adminstration of Step 1 to the Examiners. Consequently

* See e.g., System Federation v. Wright, 364 U.S. 642 (1961); Chrysler Corp. v. United States, 316 U.S. 556 (1942.

hb ja 3

if Step 2 as proposed is modified to give responsibility thereon to the Examiners, no legal prejudice inures to the Examiners from the change of the directives of the March 1975 judgment.

Settle modified judgment on five days' notice accordingly setting forth the proposed new plan but allocating the administration of Step 2 of the new plan to the Board of Examiners. So ordered.

MR. COHEN: I would reargue either now or at such time as you would like to set down an opportunity for reargument.

THE COURT: Time with me is relative. Now is always useful.

MR. COHEN: If you will give me five minutes.

THE COURT: All right.

MR. COHEN: Your Honor, in arriving at your conconclusion, you articulated one aspect of New York State law correctly, but if I may be so bold, I submit --

THE COURT: Don't hold back any punches.

MR. COHEN: I submit --

THE COURT: I was a trial lawyer for a great many years, and I do wince at uncomfortable statements.

MR. COHEN: I think you misapplied that law which you have articulated in a particularly egregious way, and I would like to, in a short time, explain what that mistake is that you made.

The mistake is this:

You somehow seem to believe that if the Board of Examiners has a role in an examination process, that that satisfies the statutory scheme. That is an error. The statute makes it very clear that it is the responsibility of the Board of Examiners to determine the examinations that will be given. "The Board of Examiners shall prepare and administer objective examination to determine merit and fitness of all candidates for supervisory positions."

That goes as far back as 1921 --

THE COURT: Would you just read that to me slowly, please.

MR. COHEN: Section 2590(j) of the Education Law provies that the Board of Examiners shall prepare and administer objective examinations to determine merit and fitness of all candidates for supervisory positions."

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Section 2569(a) says:

"It shall be the duty of the Board of Examiners to hold examinations whenever necessary to examine all applicants who are required to be licensed or to have their names placed on eligible lists and to prepare all necessary eligible lists."

It has been held repeatedly, and one quote is particularly instructive, which says that it was the obvious purpose of this section to confer upon the Board of Examiners the power and duty of examining applicants for teachers' licenses.

This happens to be a case involving teachers' licenses, but the same thing can be said for supervisors' licenses.

Such power may not be exercised nor may such duty be performed without giving the Board of Examiners entire control over the examination of applicants, which includes the preparation of questions, the rating of answers and such other investigation as may be necessary to ascertain the fitness of applicants for licenses.

As to these matters, the power of the Board of Examiners may be exercised exclusive of control by the Board of Education and the Superintendent of Schools.

THE COURT: Who selects the candidates?

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MR. COHEN: The selection of candidates under the decentralization law is by the Community School Board.

THE COURT: In other words, the Board of Examiners does not select the candidates.

MR. COHEN: No; they just certify them.

THE COURT: Isn't Step 1 a mere selection of the candidates?

MR. COHEN: No. Step 1 is not. That is another of your Honor's errors, if I again may point that out.

Step 1 is a substitution of a non-examination for an examination. The accreditation process, in which the Board of Examiners is now relegated to being a clerk to administer always existed. The Board of Education and the Chancellor always determined what the qualifications were, what the requirements were, what the professional degrees were et cetera.

To say that the Board of Examiners now should come in and they are going to check over that record, and that is their role as an examiner is sophistry to the highest end, if I may again point to the development of a so-called examination.

It is not an examination. The law calls for two things. You have focussed on only one of them. The law calls for two things. One is a determination of accreditation

hbp

by the Chancellor and the Board of Education. We have never had any quarrel about that. They have always done it. They continue to do it, and they have no need certainly for a Board of Examiners to check on whether they can read the candidate's record. They can read adequately.

The second part and part of the statute which I just read to your Honor is the part that calls for objective examinations. That is an overlay on top of a determination of accreditation.

As the defendant Board of Education points out in their papers, only Buffalo and New York City -- quite properly, they point out -- only in Buffalo and in New York City is that additional requirement present. But it is present. It does not negate the need to follow the statute by saying it is only required in Buffalo and New York. It is required in Buffalo and New York presumably because in larger cities there was greater need for that kind of protection. And the Board of Examiners exists. It has a statutory role, and by doing what your Honor is doing, you are making two errors. One is, you are permitting entry into the system of people who perhaps don't have the appropriate qualifications as determined by the Board of Examiners, the agency set up under the State law to make that statement.

It was not set up to be a stamp, a rubber stamp for

a determination made by the Board of Education. That is error number one. Secondly, you are not providing the opportunity for the Board of Examiners to fulfil a constitutional role in developing constitutional examinations.

This case started with an attack by the plaintiffs on the constitutionality of old exams that were being given by a Board of Examiners who were, it was argued, discriminating against minorities by the kind of exams they were giving. Judge Mansfield found that there was de facto discrimination, and the burden shifted, and we did not carry the burden of proving the exams were job related, and he said in his decision, "You fellows go out and take a hard look at your exams and come up with another kind of exam that meets the constitutional standards, that will be job related and won't fall short of that."

And that is exactly what we have done. We have come up with a program of examinations which meets any constitutional standard, the one that is interpreted under Title VII by the EEOC or any other constitutional standard, and it is not the plaintiffs' business, and it is not the Board of Education's business, and, again, if I may be so bold, your Honor, it is not this Court's business to determine what the Board of Examiners deems to be an appropriate examination.

It is this Court's business to determine whether

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those examinations are constitutional and whether those examinations violate a law, but it is not the business of this Court to substitute its judgment or the judgment of the Board of Education for the judgment of the plaintiffs as to what it considers to be a better system, a more efficient system or another system.

The Board of Examiners had many ideas about what might be a better system and subrogated those notions in the interests of greater community acceptance, and the opportunistic effort of the plaintiffs to climb on the bandwagon of the Board of Education when at the last minute, six weeks after the meeting in your office, it was suggested that there ought to be a modification of this order, should not be granted the kind of status and dignity that it is.

This is an effort to crawl out from under an order that was granted by this Court, that was adopted, that provides for constitutional exams, that everybody agreed to, that has no difficulty being implemented except for the fact that the Board of Education does not want to implement it. It is capable of implementation in a constitutional manner.

The Board of Examiners has the duty and the responsibility to do it. It is not the responsibility of these other parties to do it, and we urge this Court to reconsider what we think is a hasty judgment based, I believe, on not

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a complete understanding of what has been involved in this case, and I would urge your Honor to reconsider this determination.

Just one moment.

The process -- I want to point out to the Court -- the process of getting a license is that before you can get a license you are to be examined by the Board of Examiners, in a manner which is determined. If you pass the examination, you can get the license. What you are going to do to the Board of Examiners now is, you are going to put them in the position of being a clerk to the Board of Education, providing provisional licenses for people who get through a screening process, which is no screening process, the same as the State accreditation system which exists in the rest of the State right now, and the addition of a so-called written essay question.

If we wanted to adopt written essay questions, that is exactly what the plaintiff complained about in 1970.

The plan that we have adopted, after great discussion and great effort, is a very modern, imaginative, innovative plan, utilizing simulation tests, utilizing role playing, provides an opportunity for great variety of current, modern testing devices to avoid precisely the com-

plaint that plaintiff laid at the doorstep of the defendants six years ago, namely, that it was using outdated exams which bore no relationship to the job.

Here we have an opportunity to provide examinations which are going to tell community school boards something about their candidates, which are going to give them an opportunity to choose on the basis of some information which is relevant, meaningful and current, and what is happening is that kind of evaluation, that assessment profile is going to be substituted by a mere check-off of accreditation considerations, plus the addition of a written essay, which is exactly the kind of an irrelevant examination that the plaintiffs were complaining about six years ago.

With all the strength I can summon -- I have been involved with this case for six years. We broke our backs to reach a point where everybody would agree to a settlement. We got an agreement on a settlement. There is no reason under the sun why that judgment can't be implemented, and I urge the Court to have it implemented and not substitute for it something that is going to be meaningless and worthless and, in my opinion, illegal.

THE COURT: Mr. Cooper, what do you say about the two mistakes that I have just been making?

MR. COOPER: Your Honor, I don't think you have

hbP

made any mistakes.

Your Honor, first of all, it should be clear that some of the things that Mr. Cohen is talking about are pie in the sky. The brand-new examination system, with the simulations and all that -- that is what he hopes will be produced after this whole process is over, but it has not been produced yet, and I have my doubts as to whether it will ever work out.

But more important, on the State law point on which he rests, it seems to me odd that he has argued, he has presented this whole argument as if your Honor's modification of Step 2, the modification and proposed order in Step 2 had not been made.

His argument -- I won't agree with it. Even if your Honor had accepted the Board of Education's proposal as is, I still would think his argument is wrong, but once your Honor makes that change giving the Board of Examiners full responsibility for Step 2, his argument just passes your Honor's order in the night.

The Board of Examiners has a major, important role. First of all, in Step 1, they run Step 1. The Board of Education sets the qualifications; the Board of Examiners performs what he calls a clerical function. Whatever it is they perform. they have full responsibility for it.

hbP

But then Step 2, which is an opportunity for an evaluation under your Honor's order -- they have responsibilty there. That seems to me to make his argument beside the point.

A similar issue is raised, your Honor, in an appeal which was lodged in the Court of Appeals for the Second Circuit in the second appeal in this case, I believe, when the present interim plan was under challenge. At that time it was being complained that the interim plan was unsatisfactory because the only examination satisfactory under State law, because the only real examination was an on-the-job evaluation, and the Court of Appeals there determined, the Second Circuit Court of Appeals, that an on-the-job evaluation was an adequate evaluation.

THE COURT: Was it adequate?

MR. COOPER: Yes. It met the requirements of State law.

THE COURT: That was 496 Fed 2nd?

MR. COOPER: Yes. Second appeal. Yes, your Honor.

So my only answer is that with the order as modified by your Honor, it is simply wrong for the Board of Examiners to complain it is being derived of a meaningful role. They have a role.

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THE COURT: It seems to me that I have given entire control over the examination process to the Board of Examiners. Apparently I have not communicated that sufficiently to Mr. Cohen.

MR. COHEN: Your Honor --

MS. ROTHMAN: May I be heard?

THE COURT: I think I see the point, as you correctly point out.

The Second Circuit has already held in this case under 496 Fed 2nd that an on-the-job evaluation, or on-the-job evaluations by the Board of Examiners, which is really Step 2 in the modification, satisfy the requirements of the New York State Education Law and the Constitution regarding the role of the examiners in administering objective examinations.

I think that Mr. Cohen has not given full faith and credit to the change that I proposed in the plan that was submitted to me today by placing responsibility not only for Step 1 but Step 2 in the examiners.

At all events, having heard the re-argument and having at least considered the very points made on the re-argument and decided them in the manner in which I made the original decision, I hold that although the re-argument requested by the Board of Examiners was granted, having heard

hbP

the re-argument, the decision is adhered to.

MR. COOPER: Thank you, your Honor.

MR. COHEN: Thank you, your Honor.

MS. ROTHMAN: Thank you, your Honor.

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Memorandum Decision and Order of Judge Pollack, dated June 1, 1976, endorsed on the Board of Education's Motion (dated April 9, 1976)

LEGAL FILE

Index No. 70 Civ 4141 Year 19.....

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOSTON M. CHANCE, et al.,

Plaintiff,

-against-

THE BOARD OF EXAMINERS, et al.,

Defendants.

NOTICE OF MOTION

W. BERNARD RICHLAND
NORMAN REDLICH,
Corporation Counsel,
Attorney for Defendants
Rothman-566-2186
Municipal Building,
New York, N. Y. 10007

Due and timely service of a copy of the within
is hereby admitted.

New York, ...19.....

.....
Attorney for

To

....., *Esq.,*
Attorney for

3-3078-518067(73) 346

945a

LEGAL FILE

JUN 0 2 1976
S.D. OF N.Y.

70 Civ 4141 (MP)

Motion granted as indicated on the record of June 1, 1976 Settle order on four days notice.
Reargument requested by the Board of Examiners, granted and reargument heard the decision is adhered to

So Ordered
June 1, 1976

Milton Pollack
USDJ

Judgment, plus exhibit, dated July 7, 1976

947a

U.S. DISTRICT COURT FILED
APR 7 1976
S.D. OF N.Y.

BOSTON M. CHANCE
LOUIS C. MARCADO, et al.,

Plaintiffs,

-against-

THE BOARD OF EXAMINERS AND THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

JUDGMENT MODIFYING ORDER OF MARCH 25, 1975

70 Civ. 4141 (M.P.)

WHEREAS, on July 12, 1973, this Court entered a Final Judgment herein against defendant Board of Examiners, its members, and defendant Chancellor of the City School District of the City of New York based upon a Stipulation of Settlement with the plaintiffs, approved by the court; and simultaneously issued an Order against defendant Board of Education, its members, and the Deputy Superintendent of Schools modifying a Preliminary Injunction previously issued against them; and

WHEREAS, paragraphs III and VI of the July 12, 1973 Judgment and Order authorized defendants to administer an interim examination system pending development of a Plan for a permanent system for selection and licensing of supervisors in the New York City School System, and paragraphs IX and X provided for modification of said Judgment and Order to permit the implementation of such a Plan, and the administration of plenary examinations for supervisors; and

WHEREAS, on March 25, 1975 this Court issued an Order Modifying Final Judgment and Order (hereafter the March 25, 1975 Order) which modified the July 12, 1973 Final Judgment and Order to permit development by defendants of a permanent new licensing system in accordance with a Plan annexed thereto and issued a Final Judgment against the defendants Board of Education, its members, and the Deputy Superintendent of Schools; and

WHEREAS, on April 9, 1976, the defendants Board of Education and Chancellor moved this Court for an order modifying the March 25, 1975 Order and seeking approval of the modified Plan for licensing and selecting supervisors in the New York City School System as set forth in Exhibit 1 attached to the motion papers; and

for an Order "implementing" the March 25, 1975 Order; and

WHEREAS, this Court, having considered the motion papers, affidavits and memoranda of law submitted by defendants Board of Education and Chancellor, in support of said motion, and in opposition to the aforesaid motion of Board of Examiners; and affidavits and memoranda of law submitted by plaintiffs supporting said motion of Board of Education and Chancellor and opposing the aforesaid motion of the Board of Examiners; and the motion papers, affidavits and memoranda of law submitted by defendant Board of Examiners supporting its motion and opposing the motion of the Board of Education and Chancellor; and having heard oral argument on June 1, 1976 from counsel for defendants Board of Education and Chancellor, and counsel for defendant Board of Examiners, and counsel for plaintiffs; and having, on June 1, 1976, also heard oral reargument by counsel for defendant Board of Examiners and, being fully advised, rendered its decision on June 1, 1976,

NOW, it is hereby Ordered that:

(I) The motion of defendants Board of Education and Chancellor is hereby granted except that the Plan which was annexed as Exhibit "1" thereto is modified by allocating to the Board of Examiners the responsibilities of administering the evaluations in "Step "2" thereof, as indicated in Exhibit "A" hereto.

(II) Defendant Board of Examiners' motion "to implement" the March 25, 1975 Order is denied.

(III) Paragraph VI of the March 25, 1975 Order and the Plan referred to therein are hereby stricken.

(IV) The Plan for Licensing and Selecting Supervisors in the New York City School System which was annexed as an exhibit to the affidavit of Robert Christen, sworn to April 12, 1976, is approved as herein modified, and, as so modified, is annexed as Exhibit "A" hereto and made a part hereof (the "Modified Plan"), and notwithstanding any other provision in the Final Judgment of July 12, 1973, and in the March 25, 1975 Order, defendants are permitted and authorized to develop examinations for supervisory positions and thereafter to administer and conduct such examinations, to process and

evaluate such examinations, to promulgate eligible lists and to issue licenses based upon such examinations, all in accordance with said Modified Plan.

(V) The reporting provisions contained in the introductory paragraph and subparagraphs A-D of paragraph VII of the March 25, 1975 Order are deleted, and the provisions included in Section VI of the Modified Plan are substituted therefor.

(VI) Except to the extent inconsistent herewith, the provisions of Final Judgment of July 12, 1973 and the March 25, 1975 Order shall continue in full force and effect as against all of the defendants.

Dated: New York, New York
July 7, 1976

Milton Pollack
U.S.D.J.

JUDGMENT ENTERED - 7/7/76

Raymond F. Burghardt
Clerk

Introduction and Summary

This Plan provides for the development of "open qualifying" examinations by the Board of Examiners in fulfillment of its statutory responsibility to provide examinations for the licensing of supervisors on the basis of "merit and fitness." The Plan also describes adaptations of appointment procedures that have been developed by the Board of Education which will be coordinated with the new licensing process to effect a nondiscriminatory, job-related process of qualifying and selecting supervisory personnel.

The fundamental goal of this Plan is to develop a valid, job-related selection system, consistent with the requirements of Title VII of the 1964 Civil Rights Act, as amended, and of the United States Constitution.

The premise of this Plan is that the new supervisory selection system must be characterized by two main features:

1) The use of qualifying procedures which facilitate entry by diversely talented and experienced individuals into competition for supervisory appointments; and

2) The use of on-the-job evaluation as a basis for determining permanent licensure.

Additional considerations are that qualifying procedures must be practical and economical, and all procedures must be designed and administered to obviate discriminatory exclusion of applicants for failing to meet non-job related requirements.

To achieve these goals, the Plan provides for a two-step licensing and selection process. Provisional licensure based upon an unassembled open qualifying examination, will be a pre-condition to placement on eligible lists and initial appointment. All persons placed on eligible lists must possess the experience and education requirements for state certification. Selection for such appointments shall be made by appointing authorities from among individuals on eligible lists based upon the information furnished by the

Board of Examiners and pursuant to selection procedures conducted in accordance with requirements established by the Chancellor. Following one year of provisional service, candidates will be evaluated by the Board of Examiners and decisions as to whether or not they shall be permanently licensed shall be made based upon their on-the-job performance.

Additional provisions are set forth in the Plan to assure that it will be open and non-discriminatory, and capable of speedy implementation, as well as to facilitate transition from the current interim system.

I. New Licensing and Selection Procedures

Each of the Plan's two phases--provisional licensure and selection, and permanent licensure and appointment--engages the full resources of the system to assure high quality in licensing and selection.

A. Phase I

Provisional Licensure.

The provisional phase starts with an open qualifying examination using a profile resume application (P.R.A.) technique. The Board of Examiners will determine candidates' compliance with training, experience and other requirements established by the Chancellor pursuant to State Law. This examination, an unassembled examination to be developed and administered by the Board of Examiners, will consist of a review, verification and analysis of record. The Board of Examiners will establish procedures by which candidates may document their training and experience. On the basis of an evaluation of this material, as well as any other inquiries appropriate to verify transcripts and resumes, the Board of Examiners will determine which applicants are qualified and therefore eligible for placement on an eligible list and for provisional licensure.

Candidates will also be required to participate in a written essay examination developed by the Board of Examiners and administered under proctored examination conditions by the Board of Examiners. The essay will be designed to demonstrate skills in

written expression about matters relating to the position for which application is made, and the Board of Examiners will evaluate and comment on the candidates' written communication skills.

The Board of Examiners will develop profiles of each candidate on the eligible list. The profile will contain the candidate's record and written essay, and the Board's reviews and analyses thereof. These profiles shall be made available to all appointing authorities to which applicants wish to apply for positions.

Provisional Appointment. Selection by appointing authorities is a crucial second step in Phase 1. Safeguards comparable to those developed by the Chancellor during the interim period, under so-called Special Circular 30 procedures, will be continued and will be strengthened. These have required appointing authorities to institute uniform non-discriminatory selection procedures, affording adequate notice to applicants, and involving parents and professionals in a deliberative process subject to review. At present, a monitoring task force from the Board of Education's Division of Personnel supervises the selection process in order to insure such uniform non-discriminatory selection procedures. Under the new Plan, the authorities will be assisted in their assessments of individual qualifications by the profiles. Based on these assessments, provisionally licensed individuals may be appointed to fill vacancies for provisional periods of one year.

B. Phase 2

Permanent Licensure.

On-the-job performance evaluations leading to permanent licensure will be made by the Board of Examiners of persons who have been retained for the entire provisional year of service. These evaluations shall be based upon uniform standards and criteria. These evaluations will assess the candidates performance in terms of the essential duties of the job as determined by the Chancellor pursuant to his authority under Section 2554(2) of the Education Law. Upon completion of on-the-job evaluations, the Board of Examiners shall certify to the Board of Education whether or not candidates have met the performance requirements. Applicants who meet such requirements will be issued permanent

licenses. Applicants shall be entitled to full disclosure of the procedures and ~~guidelines~~ criteria used in the assessment process and shall have the right to appeal from any or all findings in accordance with Section 13 of the Board of Examiners' By-laws.

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Permanent Appointment. Permanently licensed individuals will be eligible for appointment by any appointing authority for the probationary period established by State law.

II. Initiation of the New System

The new system will be effectuated immediately on a schedule responsive to current needs. As soon as practicable after the effective date of this Order, the Chancellor will review all titles of supervisory positions for which licenses have been established and the minimum training and experience requirements therefor, and shall order the Board of Examiners to commence Phase 1 examinations starting with those three positions in which the most vacancies exist.

Phase I examinations shall thereafter be administered and the first eligible lists promulgated for each title as promptly as administratively feasible.

III. Frequency of Step 1 Examinations and Establishment of Eligible Lists for Persons with Provisional Licenses

The Plan is responsive to the parties' long standing concern to maximize the opportunity for qualified minority applicants to compete for supervisory positions. Once an eligible list is established in regard to a particular title, Phase I examinations shall continue to be administered and names added to eligible lists on an ongoing, continuing basis so that applications may be submitted at any time and no more than 90 days may intervene between an application and determination of eligibility for provisional licensure. Successful candidates for provisional licensure shall have their names added to eligible lists and shall remain on such lists for a period of four years.

IV. Phasing Out of Interim System of Assignment and Licensing

A. Assignment and Appointment:

The interim system of assigning licensed or unlicensed per-

sons to fill vacancies established by the Final Judgment and

Order of July 12, 1973, shall continue with respect to a particular title, until the first new eligible list for such title is established and the first provisional licenses therefor issued, at which time it will terminate with respect to that title. From that time on, appointing authorities shall be free to fill supervisory vacancies in such title with persons who possess such provisional licenses or with persons who possess licenses granted pursuant to the interim system of performance evaluation or with persons who possess licenses granted pursuant to the previous system of examination. Notwithstanding the foregoing, any unlicensed person serving pursuant to a valid assignment in accordance with the interim assignment system at the time such system terminates with respect to the title in which he is serving, may be continued in employment by the appointing authority pending permanent licensure pursuant to the provisions of paragraph B below, and any such individual whose application for on-the-job evaluation by the Board of Examiners was filed prior to the date a new eligible list was established for that title shall be entitled to continue in service in that title as long as necessary to complete such evaluation.

B. Licensing:

The interim licensing system shall terminate for a particular title as of the date the Board of Examiners promulgates the initial announcement of the Phase 1 examination for that title, provided that all unlicensed persons then serving in such title under valid assignment pursuant to the interim system, shall have the option to be evaluated on the basis of their on-the-job performance and to receive permanent licenses pursuant to that system if they have applied or apply for evaluation no later than five months and 1 day following such promulgation date; alternatively, such individuals may elect to have up to five months of actual acting service in the title credited, together with subsequent service in said position, for the purpose of determining the date they become eligible for on-the-job evaluation by the Board of Examiners for purposes of permanent licensure under the new system.

V. Board of Examiners Staff

This Plan will facilitate conversion by the Board of Examiners to a staffing pattern which avoids its present and almost exclusive reliance on currently employed teaching and supervisory personnel in favor of professionally trained personnel and consultants from the testing and measurement field, as well as from private industry.

No member of the staff shall participate in the development or administration of any test, analysis or evaluation, without having first received appropriate training, with particular emphasis on training in E.E.O.C. testing and validation guidelines. Affirmative action recruitment efforts will be made to attempt to make the staff representative of diverse segments of the community.

VI. Reporting Provisions

For a period commencing with the date of this Order and ending two years after permanent licenses have been promulgated for the first three positions for which eligible lists are established pursuant to this Plan, defendants shall comply with the following provisions for collecting, maintaining and furnishing data to plaintiffs' counsel:

A. Phase 1 Examinations

1. Development

Ten days before the announcement of the holding of any examination, the defendants shall provide plaintiffs' counsel with:

a. A statement of the number of vacancies determined to exist in each position for which Step 1 examinations are announced, a description of experience, training and any other requirements established by the Chancellor for each such position, and all pertinent background information bearing on the establishment or continuance of such requirements.

b. A full description of examination procedures.

2. Administration. 956a

a. The Board of Examiners shall provide plaintiffs' counsel with copies of all examination announcements at the time such announcements are released.

b. Promptly after examinations are held, the Board of Examiners shall provide plaintiffs' counsel with the following:

i. Copies of examinations.

ii. A report on the racial and ethnic character, i.e., black, Puerto Rican or Latin American descent or origin, or other (hereinafter racial/ethnic), of the persons who administer the examination.

iii. A report on the racial/ethnic breakdown of the groups of candidates applying for, taking, passing and failing each such examination. Said reports shall also be submitted to the Court at the times specified.

iv. A copy of the notice given to applicants regarding their right of appeal.

B. Phase 2 Examinations

1. Development

a. Defendant Board of Education shall furnish plaintiffs' counsel with full descriptions of the essential duties of the job as determined by the Chancellor for each supervisory position pursuant to paragraph I.B. hereof, together with all studies, data, analyses and reports bearing on their development. These shall be made available as soon as they are developed but in no event later than their first distribution to the Board of Examiners for comment or otherwise or three months before the first on-the-job evaluation in which they are to be used, whichever is earlier.

b. Defendant Board of Examiners shall furnish plaintiffs' counsel full descriptions of all procedures, as well as all rating, evaluation and any other forms and/or instructions to be used in conducting on-the-job evaluations for each supervisory position. These descriptions shall include full information on the procedures for selection and on the qualifications to be required of examination assistants or other personnel who will administer the Step 2 evaluations for each such position. All materials required by this subparagraph "b" shall be made available as soon as they are developed but in no event later than two months before the first on-the-job evaluations to which they pertain. Notwithstanding the foregoing, such materials which are not otherwise available to applicants hereunder shall be made available following the execution by plaintiffs' counsel of a stipulation which shall be filed in court and which shall preserve the confidentiality of such material and restrict access to such material solely to plaintiffs' counsel.

2. Administration.

Commencing 15 months after the promulgation of the first new eligible list to be established pursuant hereto, defendant Board of Examiners will submit to plaintiffs' counsel and the Court quarterly reports on the conduct and outcome of on-the-job evaluations of persons on such lists, including:

a. Number of applicants for on-the-job evaluation from each promulgated list since last reporting;

b. Number of evaluations of applicants from each list;

c. Pass-fail data for applicants from each list by race/ethnic group and community school district or other appointing authority.

d. Full information on the racial/ethnic character and on the qualifications of examination assistants or other personnel who administer the on-the-job evaluations for each supervisory position.

C. General.

Defendants shall make available to plaintiffs' counsel all other data, studies, analyses and reports relevant to the development, administration and implementation of this Plan and generated in the course of said development, administration, or implementation.

Board of Examiners' Notice of Appeal,
dated July 27, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOSTON M. CHANCE, et al.,

Plaintiffs,

-against-

THE BOARD OF EXAMINERS AND THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

NOTICE OF APPEAL

70 Civ. 4141 (M.P.)

Notice is hereby given that defendant Board of Examiners hereby appeals to the United States Court of Appeals for the Second Circuit from the "Judgment Modifying Order of March 25, 1975" entered in this action on the 7th day of July, 1976 by the Honorable Milton Pollack, and from each and every portion of said Judgment.

Dated: New York, New York
July 27, 1976

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER
Attorneys for Defendant Board of Examiners

By _____
A Member of the Firm

425 Park Avenue
New York, New York 10022
759-8400

TO: ELIZABETH B. DUBOIS, ESQ.
Attorneys for Plaintiffs
271 Madison Avenue
Suite 708
New York, New York 10016

CORPORATION COUNSEL'S OFFICE
Attorneys for Defendants Board of Education and Chancellor
Municipal Building
New York, New York 10007
Attention: Deborah Rothman, Esq.